

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 75

THE UNITED STATES, PETITIONER

VS.

ALGERNON BLAIR, INDIVIDUALLY, AND TO THE USE
OF ROANOKE MARBLE & GRANITE COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Designated portions of transcript of testimony.....	95	1
Caption.....	95	1
Testimony of—		
Algernon Blair.....	95	1
Frank Sidney McFaden.....	175	41
Joseph Edwin Lacey.....	196	51
Judson Emmet Milam.....	236	74
Le Roy W. Kranert.....	258	87
John T. Clarke.....	265	91
C. W. Roberts.....	267	92
Algernon Blair (recalled).....	422	123
Joseph W. Pate.....	424	174
Frederick E. Durden.....	428	176
Neal Gordon Andrew.....	467	195
John T. Clarke.....	500	212
C. B. Wilson.....	531	228
F. M. Godbey.....	560	244
John Nelson Garlick.....	587	257
F. M. Godbey (recalled).....	599	262
C. B. Wilson (recalled).....	608	266
D. L. Marsteller.....	660	290
B. F. Moomaw.....	672	296
John T. Clarke (recalled).....	684	302
W. W. Hobbie.....	700	310
E. F. Perkins.....	720	320

INDEX

Designated portions of transcript of testimony—Continued.

Testimony of—Continued.

	Original	Print
T. E. Devlinney.....	737	327
C. C. Phipps.....	758	335
John T. Clarke (recalled).....	775	341
P. M. Feltham.....	787	346
Thomas G. Dodd.....	958	437
Joseph A. Fahy.....	990	451
Thomas G. Dodd (recalled).....	992	452
A. R. Brown.....	1114	514
Thomas G. Dodd (recalled).....	1120	518
Eugene C. Sauer.....	1205	566
Frank M. Godbey (recalled).....	1209	569
Pierce Allen Pratt.....	1280	607
Edward J. Armbruster.....	1323	631
Frank M. Godbey (recalled).....	1346	645
P. E. Walters.....	1354	650
C. W. Roberts (recalled).....	1361	653
Joseph Hamilton Hill.....	1453	705
John Luther Powers.....	1461	711
John T. Clarke (recalled).....	1482	722
Order allowing certiorari.....	1572	766
Stipulation with respect to printing record.....	1573	766

95

In Court of Claims of the United States

No. 43548

ALGERNON BLAIR, ETC.

v.

THE UNITED STATES

**Designated Portions of Transcript of Testimony*

96

PLAINTIFF'S WITNESS ALGERNON BLAIR

DIRECT EXAMINATION BY MR. RAIL

By the COMMISSIONER.

1. Q. State your full name.

A. Algernon Blair.

2. Q. Your age?

A. Sixty-four.

3. Q. Your residence?

A. Montgomery, Alabama.

4. Q. Your occupation?

A. Building contractor.

5. Q. You are the plaintiff?

A. I am.

9. Q. You answered that you are a contractor?

A. Yes.

10. Q. Were you engaged in that business in November and December 1933?

A. I was.

11. Q. How long have you been engaged in that business?

A. Thirty-five years.

97

12. Q. I wish you would state what education and training you have had, prior to December 2, 1933, with reference to that character of business in which you have been engaged, including that involved in this case, to wit, the construction of the Roanoke Hospital Facility?

A. The taking in my own name as contractor of small contracts, as far back as thirty-five years or more, and gradually developing until I was competent and had the facilities for taking contracts as large as this.

13. Q. Would you state some large contracts that you had had in years immediately prior to your entering into the contract in this case, for the purpose of showing your experience?

A. Shortly after the War, there came up the problem of building these Veteran Hospitals. At that time I was engaged in building post-office buildings throughout the country. My first post-office contract was in 1907, and, continuously I was occupied on that in those days, in smaller contracts. By small contracts, I mean from sixty to two hundred and fifty thousand dollars. Immediately after the War, when the Treasury Department—they had the First Veterans Hospital, which was built at Dawson Springs, Kentucky—I secured the contract, I imagine it was the latter part of 1920, about \$650,000.00, for certain buildings at Dawson Springs. Early in 1922, from the same Treasury Department, I secured the contract for a group of hospital buildings to be constructed in Tuskegee, Alabama, the contract running up to \$1,228,000.00. In 1923, the Veterans Administration had then become a fact, and they were handling their own construction, and among their first buildings was Gulfport, Mississippi, for which I had the contract for a group of buildings there, the contract price being probably \$700,000.00. Incidentally, about that time, or later, there was a Lepers Hospital at Carrville, Louisiana, which only indicates the volume of my work. Then the next one was at Perry Point, Maryland, in 1925, the contract price in that case being around \$700,000.00, but I suspect there was some building before which increased that. In 1926, we secured the largest of these contracts in Northport, New York, the contract price being in the neighborhood of \$2,750,000.00; and this was without mechanical equipment installation, so it would really be about a four-million-dollar job speaking of it in those terms. That was on Long Island, Northport, New York. In 1929, we made large additions to Veterans Hospital in Atlanta, Georgia, our contract-price there being \$500,000.00. I contracted, about the same time, in Memphis, Tennessee, we made additions to the Veterans Hospital there, the contract was probably \$400,000.00. Next, at Dayton, Ohio, not exactly under the Veterans Administration—to get it accurate, I think it was the Soldiers Home in Dayton, the contract price being about \$1,100,000.00, for the most high-class single building in the way of a hospital that we have ever erected, as I recall it. That brings me down, as far as hospital work is concerned, to the Roanoke job. I did not think about mentioning a number of smaller ones—I don't think that is important.

14. Q. Now, in all these cases, Mr. Blair, did you fully perform your contracts?

A. Yes.

15. Q. Did you do so within the time fixed by the contract itself?

A. In every instance.

100 16. Q. Did you plan the progress that you expected to make, and could have made, and would have made, on those various contracts before you entered upon, or soon after you entered upon performance?

A. It was always our custom, because in estimating we had to determine the probable length of time, in order to know what the overhead expense would be; and, therefore, in making these calculations, we—

17. Q. You made out a progress schedule, and tried to observe it?

A. The moment we got the contract, we developed a plan of procedure about the length of time that would be required.

18. Q. I will ask you whether or not in those cases you performed with your time progress schedule?

101 A. In most instances, because not always did we follow the curve, but, without question, we ended up at the right time.

19. Q. Were you assessed liquidated damages on any contract?

A. No, sir.

20. Q. Now, in addition to those hospital projects, you say you built post offices and other things?

A. Yes.

21. Q. What was your experience and your performance in each case on those buildings?

A. This is an evidence of it, sir, if you will permit me—we built the building we are now in.

22. Q. You erected this Government Building?

A. Yes; at a cost of about \$800,000.00.

23. Q. Mention, briefly, some of the other post-office jobs.

A. Well, I may mention Jacksonville, Florida, \$1,200,000.00; Lancaster, Pennsylvania, \$400,000.00; Akron, Ohio, \$475,000.00; Sandusky, Ohio, \$200,000.00. Austin, Texas, \$375,000.00; Galveston, Texas, \$575,000.00; Beaumont, Texas, \$400,000.00; Baton Rouge, Louisiana, \$300,000.00; Alexandria, Louisiana, \$200,000.00; Oklahoma, \$200,000.00; Key West, Florida, \$275,000.00; Spartanburg, South Carolina, \$250,000.00; Wilmington, North Carolina, \$210,000.00; Huntington, West Virginia, \$275,000.00; those are all I think of; that is all.

24. Q. Huntington is in progress?

A. Huntington was finished the first of October.

102 25. Q. Now, locally, you erected some large buildings?

A. The most interesting piece of work was a housing project in Birmingham. The contract was secured in October 1936, and actual formal acceptance of it on the 18th day of October 1937, our contract price being sixteen hundred and fifty thousand dollars, including mechanical equipment, installation, but not

including foundations, which had been put in under a previous contract; so we will call that about a two-million-dollar contract, that was executed with unusual satisfaction, I think, to the Housing Division, because of failure to get such results on previous jobs by them. We were well within our time limit.

26. Q. Locally, you erected some large buildings, also?

A. Yes; the Greystone Hotel, in Montgomery, \$350,000.00; Sidney Lanier High School, \$750,000.00; we were privileged, also, to build Camp Sheridan, in Montgomery, during the War, having been selected for that purpose, and selected because of the fact that we had made a success, although only in a small way, as I see it now, in the post-office work, for the Treasury Department, during the ten years previous—

27. Q. You say you constructed the building we are now in, here?

A. Yes, sir.

By Mr. BALL:

28. Q. The amount involved here?

103 A. This building?

29. Q. Yes?

A. About \$750,000.00?

By Mr. WATSON:

30. Q. \$720,000.00?

A. I said "about."

By Mr. BALL:

31. Q. The Montgomery high school, which we call the Sidney Lanier High School, involved how much?

A. About \$760,000.00.

32. Q. Did you erect the City Building in this city?

A. So close to me I had forgotten it, the Montgomery City Hall, finished by us about the first of September. Contract price including foundations, which were a separate contract, about \$510,000.00.

33. Q. Well, now, is there any Federal element in any of these other buildings, now, outside of the hospitals and post offices, PWA?

A. PWA—if I may take a minute to explain, PWA, in a sense, controls, not only their own, but controls the construction of buildings for which they lend the money; so we were working for PWA, I would say, certainly under their inspection and their acceptance on the City Hall; if I might say further that we had a number of contracts with PWA money in the last two years that I hadn't mentioned, because they are smaller and less important, in that sense; in Gadsden, we had \$325,000.00 for a grade school building; Florence, Alabama, school building, \$96,000.00; water works at

104 Nettleton, Mississippi; sewerage system at Aliceville, Alabama, of particular interest to us was the gas plant installation for the City of Ozark, Alabama, which was a contract which included the erection of the plant, pipe lines, installation of the meters, and everything all ready to run, not much in money, \$65,000.00, we secured that principally because we had completed just prior to that an installation at Andalusia, Alabama, of the same thing.

34. Q. In any instance which you have mentioned, or in any other instance, have you ever failed to perform your contract in full, to the satisfaction of the other party?

A. I have never failed.

35. Q. You have always completed within the contract limit of time in each one of them?

A. Not quite. There have been times, you understand, due to changes in the contract, where the time was extended, and things like that—we always came within the contract time.

36. Q. That is, actually—

A. Have we ever had to pay liquidated damages? Never.

105 37. Q. Now, Mr. Blair, in the preparation for all these contracts which you have mentioned, did you pursue the plan which you have already stated, in making an estimate of the cost as a basis for your bid on the contract, together with the progress chart, to see how long it would take to perform?

A. This project?

38. Q. Yes; and of all these projects?

A. Do I invariably do it? Do I always do it?

39. Q. Yes?

A. I am obliged to do it; yes, I always do it; we must determine the length of time it is going to take, because that is an element of the cost.

106 40. Q. Now, when you put in your bid for this, or in any contract, beginning with your home office, state everything in general that would be necessary to perform it?

A. We speak of our "home office" as the Montgomery office as distinguished from the field office, where we may be working. In the Montgomery office there are occupied several men whose business it is to prepare estimates on which we base a bid. We would speak of only one of them, or two of them, as being only computers, someone who can take the arithmetic after someone else, the real estimator, takes off the quantities; he determines, for instance the number of thousands of brick that will be required, of the several kinds, and the cubic yards of concrete, and so forth. He always uses the quotations that we secure on those items; and the subbids, meaning bids on such parts of the work as we sometimes have to sublet, for example, where plumbing and

heating, is included in general, contract we take that out and sublet that, we sublet that, and pending some of these items, that estimator comes to Mr. Clarke, the Montgomery office manager, and the estimate, is completed up to the point of our overhead sheet. The overhead sheet starts off with the premium on the bond, fire insurance, workmen's compensation, security, old age, all those things, they are just as vital to me in the estimate of the

107 work as is the cost of material. After that comes the superintendent and his assistants. If it is a small job, only a superintendent, if it is a large job, it requires some foremen, and so on. Then, after that, comes his expenses, if any, of his and his force getting there and back. Then all the field office costs of operation, telephone, fuel, ice water and the like. Then you have expense for caring for the men, that is on a job that is isolated; engineering services, photographs, a number of items like that, until it finally come to the Montgomery office expense and profits, Mr. Clarke has assembled through his estimators these figures, and he works up that overhead sheet tentatively. At the proper time, before the bid goes in, that comes to me, and Mr. Clarke and I and all the estimators sit down together and argue, not so much the quantities, because he can hardly go back to do the quantities over again, but the prices, quotations, cost, unit price of labor, the price of cement, and so on, and the big item there is, how long is it going to take us to do this job; who is going to handle it—we visualize to ourselves what superintendent, the amount we are going to pay the men we are going to use, and we set him up to be the man at a salary of so much, who he requires for his assistant, and how long it will take—seven, nine, twelve, or fifteen months—we put it down that way, and then the Montgomery office expense and profit, that depends on a lot of

108 circumstances.

41. Q. I think you have answered most of my question, and the question I want you to answer now is, when you entered into the contract for the Roanoke Hospital, did you have ample financial means and credit to perform that contract, including all your office work, the purchase of materials and equipment, payment of employees, and obtain subcontracts and pay them, so that at no time you would be embarrassed or delayed for the want of money, equipment, men or manpower, to perform?

A. I had those facilities.

42. Q. Have you any idea about what your average annual business has been for a number of years?

A. Two hundred thousand dollars a month; twenty-four hundred thousand dollars a year.

43. Q. Now, you speak of your office force or staff, you have a large part of the twelfth floor of the First National Bank Build-

ing, in Montgomery, which is especially equipped for that purpose?

A. Yes, sir.

44. Q. Which you have had for some ten years?

A. In that building, nine years.

45. Q. Now, you have there, as your staff, in addition to clerks, and so forth, Mr. Clarke, whom you speak of as your office manager—just take the principal men and their duties that you had there at the time you entered into this contract?

109 A. In the accounting department, we have Mr. Ott, who has under him other clerks. In the estimating department, we have Mr. Frank McFaden, Neal G. Andrew, W. M. Ellingsworth, Frank Higginbotham, L. W. Kranert and H. A. Butler.

46. Q. Without going further, will you say that these men are qualified, or more than ordinarily qualified for the duties which you have assigned to them in the various phases of this work?

A. Very much so, by reason of their years of experience with me.

47. Q. Do you, in addition to the experience they bring to you, undertake to educate them in your peculiar way of successfully transacting business?

A. Indeed I do.

49. Q. Now, in addition to the office force which you have, do you have equipment, machinery and so forth, supplies and warehouse where you keep these things?

A. In North Montgomery, on the edge of this city, we have a warehouse, which we have used certainly for the last fifteen years in storing of equipment, principally between jobs or the accumulating of equipment, and some materials; that is incidental, however.

50. Q. Then I will ask you the general question, with special reference to this Roanoke job, as to whether, when you made the contract, and during the performance, you were fully
110 equipped in every way for the prompt execution thereof?

A. I was.

52. Q. Did you, in compiling the data for your bid in this case, pursue the method of estimating that you have said generally prevails in your organization?

A. I did.

53. Q. About how much time was consumed in taking off quantities and ascertaining the costs, roughing out the amount for which you could afford to take this job?

A. I guess we had the plans four weeks ahead of the time when we were to submit the bid. Sometimes, we have five weeks. I think it is safe to say we had it four weeks.

54. Q. And you submitted your bid on or about November 29, 1933?

A. Yes.

55. Q. I wonder if you will recognize this as a copy—I won't say—I ask if you recognize this document, as a copy, with certain blanks in it, of the bid which you made? [Showing paper.] I am not sure whether we asked the Government to furnish that, or not, but I think we had a general understanding.

A. I recognize this as being the Montgomery office copy of our proposal.

56. Q. With certain blanks in it?

A. Yes.

57. Q. Your bid? That bid was executed was it?

A. It was.

111 58. Q. And on that was based the contract which is involved in this case.

Mr. WATSON. We admit it subject to verification.

The COMMISSIONER. Admitted as Plaintiff's Exhibit No. 1, subject to verification (so marked).

59. Q. Now, I show you, Mr. Blair, what purports to be a contract, of date December 2, 1933, covering a portion of the Roanoke Facility, or Facilities. Is that the contract?

A. [Looking at paper.] That is the contract.

60. Q. That is the contract that you entered into?

A. Yes. [Paper shown to Mr. Watson.]

The COMMISSIONER. Which, after inspection by Government counsel will be admitted subject to verification as Plaintiff's Exhibit No. 2 (marked).

61. Q. After you entered into that contract, Mr. Blair, did you receive notice from the Government of the acceptance of your bid, which I show you, as a letter of December 2, indicating exactly what building you were to perform?

A. The answer is yes.

62. Q. Mr. Blair, when you bid on this job, did you have a set of plans and specifications?

A. Yes.

63. Q. Will you look at this blueprint which is marked "General Plot Plan," number one plot plan, Roanoke, Virginia, and state whether or not you had that before you and your staff when you took off your quantities and made your estimates?

112 A. I did have it.

64. Q. And made the bid?

A. I did.

Mr. BALL. Now, we offer that.

The COMMISSIONER. Plaintiff's Exhibit 9 (marked).

The WITNESS. Exhibit No. 10, is a plot plan of the property made in my office, to show all of the facts on Exhibit No. 9, so far as they related to our work. We purposely left off contours, grades and other data, so as to more clearly bring out the work in which we were engaged. It shows each of the buildings under our contract, all of the roads and all of the sewer lines that we connected with, and a part of our buildings.

The COMMISSIONER. Admitted as Plaintiff's Exhibit 10.

Mr. BALL. All right.

65. Q. Does that plat show also the lines of the pipes—trenches and pipes—that Redmon Heating Company had to perform, that you had nothing to do with?

A. It does so; all of those lines.

113 By Mr. BALL:

66. Q. Now, Mr. Blair, after you had made this contract, who did you put in charge of the actual performance?

A. Mr. C. W. Roberts, field superintendent. Call him "superintendent," leave off the "field."

67. Q. Spoken of, sometimes, in the correspondence, as "general superintendent"?

A. Probably so.

68. Q. But he had charge of the entire performance of your operation of the building of the Roanoke Hospital?

A. Correct.

69. Q. With him went whom or went who?

A. Mr. J. E. Lacey, engineer.

70. Q. What was his special duty?

A. In plain terms, surveyor, if you will.

71. Q. To do what?

A. In connection with roads and walks and in location of buildings—things that the land surveyor would do, was his primary obligation.

72. Q. As assistant—were there other assistants?

114 A. I mentioned Mr. Lacy, because he came on the operation first. He was not the most important man under Mr. Roberts. You don't care about the particular order of their importance?

73. Q. No.

A. Mr. F. E. Durden—assistant superintendent is his title. F. E. Durden, assistant superintendent.

74. Q. All right, Mr. Lacey, and with Mr. Lacey who?

A. You want me to keep on mentioning them?

75. Q. The most important ones, I want.

A. Mr. T. E. Devinney, cashier, meaning by that the handling of every item of business of pay rolls, freights, and the like.

76. Q. On the job?

A. On the job.

77. Q. Mr. Milam?

A. Mr. J. E. Milam.

78. Q. He was working with Mr. Lacey as his assistant?

A. It is a little bit difficult to use the word "assistant"—no.

79. Q. With Mr. Lacey?

A. Yes; he was working with Mr. Lacey.

By Mr. WATSON:

80. Q. Is he an engineer?

A. Yes; he is an engineer, but he was in charge of roads and walks, and of all outside grading.

115

By Mr. BALL:

81. Q. Now, the record shows that you were directed to proceed at once, and you received a letter, I believe on December 21st—that would be verified, provided it is true. Within what time was the requirement made under the contract to begin? Within ten days?

A. Yes.

82. Q. Within what time did you begin, and what did you do in starting in with the work?

A. The first work I did was to send Mr. Lacey to Roanoke, and he was there probably on December 23rd. He was off two days, going to some city where he had relatives, over Christmas, and getting back to Roanoke on the 26th or 27th of December. Mr. Lacey was the first man on the operation.

83. Q. Did he thereafter remain continuously until the work was finished?

A. He did.

84. Q. Did you go there in the latter part of December to give it your personal observation?

A. I was there immediately after Christmas—I would say the 28th or 29th—possibly the 30th.

85. Q. Who went with you?

A. Mr. C. W. Roberts, my superintendent, was with me.

87. Q. Did he join you in Atlanta?

A. He did join me in Atlanta—we were on the train together. That made me think we were just finishing up our

116 Atlanta job—I have forgotten exactly about that.

88. Q. Was he the general superintendent in your Atlanta job?

A. He was.

89. Q. Do you remember anything about the supervising superintendent of construction for the Government making request that you put Mr. Roberts in charge of this job?

A. It struck me as such an unusual coincidence that between the time the contract was awarded to me and the time he actually started there, Captain Feltham, who was in Atlanta, lived in Atlanta, wrote me a letter, saying that he was being assigned as an inspector, I will call it, on the Roanoke job, and that he would be happy if it happened that C. W. Roberts was selected by me as superintendent. Now, I do remember previously selecting Mr. Roberts, and there wasn't any question in my mind but what Mr. Roberts was going to the work, but it was nice to have that thing happen, there was somebody who would like to have him—all that happening, sir, was quite a coincidence.

90. Q. Now, you and Mr. Roberts went to Roanoke at the time you indicated, and was Captain Feltham there at that time?

A. I think he went on the train with us, sir.

91. Q. You remained there two or three days looking over the situation, and then left the work to Mr. Roberts and Mr. Lacey?

A. Correct.

117 92. Q. Who was designated by the Government to assist Captain Feltham?

A. Mr. Dodd. I don't remember his initials.

93. Q. T. G. Dodd?

A. Thomas G. Dodd.

94. Q. Did they remain on the job until its completion?

A. Yes.

95. Q. You didn't remain there for any great length of time, did you, or did you make visits to the work, from time to time?

A. I made frequent visits there.

96. Q. In addition to that, what sources of information did you have in regard to the progress of the work?

A. We have a system of daily reports which are required of every superintendent to be made up and sent in daily, telling how many men are at work, the rate of wages, amount of money, materials received, and other facts; but not what you would call a progress report, either, as to the amount of work accomplished; necessarily, reference was made to it always on the reports.

By the COMMISSIONER:

97. Q. On this job you had your daily reports, and I assume the Government had theirs?

A. I am not familiar with the Government's part of it, but I assume they had.

118 Mr. BALL. I am not going over these reports which are very voluminous, but we do tender them for inspection by the Government, but I want to ask Mr. Blair—

A. It will take just a second, I know what they are.

Mr. Watson asked to inspect the papers, and same were given to him for inspection.

99. Q. Will you just state, Mr. Blair, the character of the daily information that you got on this job, throughout, without going into figures, at all?

100. Q. State, which you started to do, the character of the information which you get daily from your jobs, without giving any figures?

A. The daily reports that I receive indicate what was done on the several branches of the work on that day, and the amount spent on carpenters work, work of a certain kind, number of carpenters at work, structural steel, cement finishers, and the like, giving the statement in full of the progress of the work on that day, and what they did.

The COMMISSIONER. And if there had been a shut-down on one of those days, the report would have shown the reason, would it, Mr. Blair?

A. Yes.

Mr. WATSON. It is understood the Government can examine those?

Mr. BALL. If Your Honor please, on account of that, we will offer these two volumes, covering the entire time of the performance of this contract, and ask that the first one, from 1 to 232 days, be marked exhibit—

119 The COMMISSIONER. Plaintiff's Exhibit 11 (marked).

Mr. BALL. And the second volume, 232 to 346 days—

The COMMISSIONER. Plaintiff's Exhibit 11-A (marked).

101. Q. They are all daily reports, aren't they?

A. Yes, sir.

102. Q. Going back a little bit, did you also have some other superintendents working on the job with C. W. Roberts, to wit: J. T. Roberts, W. M. Perryman and W. G. Eiland?

A. Yes; the names you mentioned came on later, and went on the work.

103. Q. Now, on the performance of the Roanoke contract did you at all times—did you, or not, at all times have ample facilities, under your control, to carry on the work—carry on the job?

A. Yes.

104. Q. Were you at any time during the performance embarrassed or delayed for want of money or equipment on this job?

A. No.

105. Q. How often did you visit the Roanoke job during the performance?

A. Generally on an average of every five weeks, sir.

106. Q. On those visits, did you inspect the work generally to see how it was getting along.

A. Yes, sir.

107. Q. I think I failed to ask you the time of performance which was planned by you on the Roanoke job within—I think you had four hundred and twenty days for complete performance—will you tell us the time that you calculated that you would, could and would perform that contract?

A. We based our calculations on completion as of November 1, 1934.

108. Q. Could you, if you had had no obstacles over which you had no control, and would you, have performed that contract by November 1, 1934?

A. Yes.

109. Q. You have no manner of doubt about your ability to do that?

A. None, at all, sir.

110. Q. And you base that on what?

A. Similar work, both as to the kind of work, and quantity, and all of the conditions surrounding it.

111. Q. And, if so, Mr. Blair, why did you not finish it by November 1, 1934?

A. Because of the inability of Redman to make progress in all of the electrical work, and plumbing and heating, an integral part of the construction; we couldn't pour concrete slabs, we couldn't do any work in the foundations, in some instances, we couldn't work here or elsewhere until the mechanical installation, or the roughing in, had been done.

112. Q. Well, now, was that a part of your contract, or somebody else's?

A. It was not a part of my contract.

121

By Mr. BALL:

114. Q. Who did have that contract?

A. The Redmon Heating Company of Louisville, Kentucky.

Mr. BALL. We offer these two pages which are furnished by the Government in response to our call, reading this way: "Items 1 and 4. Specifications; schedules and drawings applying to plaintiff's contract also apply to contract of the Redmon Heating Company," on one page, and on other "Paragraph 5. Progress chart of Redmon Heating Company does not appear in records."

Mr. WATSON. We object to the introduction of both of them, as being immaterial and irrelevant.

The COMMISSIONER. The objection is overruled, and the two sheets will be marked "Plaintiff's Exhibit 12." (Marked.)

Mr. BALL. We offer photostatic copy of contract between the United States of America and C. J. Redmon, trading as Redmon Heating Company, dated December 6, 1933, furnished to us in response to our call to the defendant.

Mr. WATSON. Note the defendant's exception.

Mr. BALL. We offer copy furnished to us in response to our call by the defendant—

The COMMISSIONER. Furnished to the Court in response to the plaintiff's call, these come into court.

Mr. BALL. From L. H. Tripp, Director of Construction, to Redmon Heating Company, dated December 19, 1935—that is an obvious error, Mr. Watson, because that was 1933.

Mr. WATSON. It appears to be a typographical error, Your Honor, in copying. We won't raise any objection to it.

122 The COMMISSIONER. Plaintiff's Exhibit 14, to which the Government objects. Objection overruled, and exception noted.

Mr. WATSON. Same objection.

By Mr. BALL:

115. Q. Mr. Blair, I show you carbon copy of a letter which purports to have been written by you to the Director of Construction Veterans Administration, dated March 15, 1935, in reference to the possibility of your filing claims against the United States Government, and ask you whether or not you wrote and had that letter sent as contractor?

A. I did [letter shown to Mr. Watson].

Mr. BLAIR. Also Colonel Tripp's reply, I think.

Mr. WATSON. It is introduced subject to verification?

The COMMISSIONER. Yes, sir.

123 Mr. BALL. That will be true of all. I will identify it all and let it all go in under one head:

116. Q. Did you receive any reply to this letter?

A. I did.

117. Q. Is this the letter, dated March 19, 1935?

A. I did.

118. Q. I will ask you whether this is a photostat, which is a copy of your final estimate and payment?

A. The voucher, except that it has no indorsement on it.

119. Q. Such as the Government's counsel has indicated, by way of protest?

A. I do identify them.

Mr. BALL. We offer all of this, then, as Number 15.

The COMMISSIONER. Plaintiff's Exhibit No. 15, consisting of four sheets (marked) [examined again by Mr. Watson].

124 By Mr. BALL:

120. Q. Mr. Blair, the contract introduced in evidence as an exhibit, as made between the United States and Redmon shows certain work to be done by Redmon, with which did you

have anything to do, at all, except in connection with your own work?

A. Nothing.

121. Q. Now, you said, but for the delays caused by Redmon Heating Company, you would have finished this work by November 1st: did anything else incidentally contribute to the delay in the completion except Redmon's failure to perform?

A. Did you say "incidentally"?

122. Q. Yes; but if you haven't it in mind, I will not press the question at present, because we have ample testimony otherwise. Will you explain to the Commissioner, in your own way what Redmon Heating Company did or failed to do, which caused delay in the performance of your contract?

A. It made it impossible for us to proceed in many instances because of their failure to do the roughing in that had to come ahead of our construction. That applies in the buildings, and no doubt in every building, and it applies in a very important way in the outside work, meaning by that the sewers, water lines, conduit, pipe lines, that had to be put in ahead of us. Obviously, we could do no outside grading, we could do no paving or curb work. I remember one particular case where there was quite a

125 bit of earth fill that we would have to do after the lines were run—after the sewer lines were run. It would not have been at all reasonable for us to have disregarded that subcontractor, or that separate contract, I mean—we had to be dependent upon him, always. Those things have happened—it isn't at all unusual procedure, for the Government in the major operation to have a separate contract for mechanical equipment installation, but it has always been our safeguard, the fact that in the specifications for our work there is also the specification for the other man's work; therefore, in our estimate of our work we turn, occasionally, we will say, to see what are the conditions under which each man operates, particularly having reference to his time of completion. The Government never sets—I will correct that—the Government did not set in our specifications, and I am sure never did set the time when the mechanical contractor shall finish his work, except to say he must work in harmony along with the general contractor—in my own words, keep out of his way.

123. Q. That is all contained in the specifications in this case?

A. Why, that is our only safeguard. We could never take a contract in which we were in the hands of a separate contractor unless he had a responsibility to keep out of our way.

124. Q. Does that operate mutually for the benefit of the mechanical equipment contractor, together with the general contractor?

The COMMISSIONER. His answer is, it should—is that it?

126 A. I presume it does—we never kept anybody waiting, so I don't know.

By Mr. BALL:

125. Q. Did Redmon Heating Company abandon its contract?

A. You see we are talking about something vital to our life in there. We were dependent upon that man. He trifled with us. I think I am safe in saying that. He certainly was uninterested, and was so badly handicapped in ways, that we could make no progress, at all.

126. Q. Did he abandon his contract?

The COMMISSIONER. Did he complete his contract?

By Mr. BALL:

Q. State whether or not he completed his contract.

A. He did not complete his contract. The problem, sir, was the fact that it took the Government so long to get him off the reservation.

128. Q. Did the Government notify you at any time that he had abandoned his contract, and it had been terminated by the Government?

A. Yes, sir; undoubtedly, at a very late stage in the game. That was in June. Our problem was from about the first of February until the first of August, and I made it my special business to endeavor to emphasize to the Government my desire to help that man. You will find in the correspondence where I asked for an opportunity to cooperate with him. There were certain things we had to work out with that man. For example, we wanted to prepare long in advance for the placing of the radiators, also there would be an operation about the windows. He has got to have shop drawings of those radiators in our hands before we leave brick there, and the running back of that recess, has
127 all got to be detailed—things we cannot do without—and there never was a time when we could get from him cooperation, due possibly to his dumbness, or I would say, more than that to some physical or financial condition of his own that made it impossible for him to do anything about it.

129. Q. Well, as a matter of fact, did the Government not notify you on June 26, 1934, that this contract was terminated?

A. They did?

130. Q. Up to that time, had he done any appreciable amount of this work?

A. None. Not an appreciable amount, sir. Nothing like what we would have had a reasonable right to expect.

131. Q. Now, in addition to whatever you had to do in the way of erection of the buildings, you had in your contract you had the performance of what we call outside or approach work?

A. That's right.

132. Q. That consisted of what?

A. The moving of many thousands of yards of dirt, grading off this place, and filling that place, making a most attractive area when it was finished, the paving of roads, several miles of them, the curbs and the gutters and the sidewalks. I think that is an answer to your question.

133. Q. Now, I want to consider your contract with reference to the outside or approach work at present without any reference to your building, or the work within the buildings, and your relation with the Redmon Heating Company in regard to that. Will you take this plot plan which has been introduced, from which the contour lines have been eliminated—what is the exhibit number?

128 A. 10.

134. Q. And explain just how the failure of Redmon to do his outside work interfered with the performance of your outside or approach work?

A. Exhibit 10 shows the lines of sewers and of water and of conduit that had to be done by the separate contractor. We could not go on with that road, we will say, and more particularly we will say we could not fill or excavate, as the case may be, in these two large areas—mind you, this drawing is one inch to a hundred feet, and it a long area around there—it is a half a mile, possibly, around that area. We had to grade all of those shaded lines, by using this dirt to fill or to lower. We couldn't do anything with those areas there, or very little with it, at all, until he had his work in place. These are manholes, in many cases, they were things all in the road there, through the radius that we had to build. Notice what a tremendous field of them there is?

135. Q. What are those white lines that cross the red?

A. The red lines indicate—well, this particular line, side line over which we had special grading, that part of the line—this item was steam main.

136. Q. Who had to lay the steam main?

A. That is part of Redmon's work.

137. Q. Not part of yours?

A. No; electric, and telephone, and gas mains, water mains, sewers, and all those lines have nothing to do with our contract. This drawing gives information, what we had to do, shown in colors. This is roads, this is original plot, this is a parking area, this is a parking area.

By the COMMISSIONER:

Q. Of gravel?

A. Yes. These are the buldings that we erected, and they were placed in every instance, so it was impossible for us to to anything, unless and until these people got out of our way.

138. Q. What I want you to tell me and the Court specifically is, how you were delayed in the building of your roads and walks, and things of that sort, by the work of the Redmon Heating Company, which is indicated by the white lines, some solid, some broke, which cross the red lines—indicate your—

The COMMISSIONER. He said they had to do their work before he could do his.

By Mr. BAILL:

139. Q. Did they do it, or not?

A. They did not.

140. Q. Now, what did you have er than grading this round and about these other (parts), through the semi-circle?

A. Everywhere, the same.

141. Q. That condition prevailed?

A. Everywhere; yes, sir.

142. Q. Now, look at Exhibit 9, which contains, or shows, the contour lines; did the failure of the Redmon Heating Co. to do its work interfere with your general grading, and the grading necessary for the location of the buildings?

A. It did.

130 143. Q. And that was a contributing cause to your delay and failure to complete by November 1st?

A. It was the major cause, sir.

144. Q. The major cause?

A. Yes.

145. Q. After you had made up your bid, or about the time you made up your progress schedule, did you notify the Government, and also the Redmon Heating Company, of your plans for completing this work by November 1st, 1934?

A. I would have to go through the record to prove that.

146. Q. If you don't remember, we will introduce letters showing that. Now, you made out a progress schedule, made in your office, you have stated, in regard to this matter?

A. You have got it in a blueprint there, somewhere.

147. Q. Can you identify this as original work done on your progress schedule in your office? If you can, all right, if not, all right?

A. In fact, I do.

148. Q. Now, you did not make these pencil calculations here, on this progress schedule?

A. No; Mr. McFaden made them.

149. Q. Mr. McFaden made that and the blueprint from it?

A. Which is the result of that.

150. Q. We will supplement our testimony on that point.

A. May I ask for the dates. This is dated March 30th.

131 Mr. BALL. We will have to explain by Mr. McFaden that date.

By the COMMISSIONER:

151. Q. Was your progress schedule posted at the site of your work?

A. Yes, I know that; I saw that.

152. Q. Was this the one that was posted?

A. The print; yes, sir.

154. Q. Did you furnish the Government with a copy of this?

A. I can't say.

155. Q. Now, Mr. Blair, if you had not been interfered with—I will put it this way: If the Redmon Heating Company had done its outside work where you had to do outside work, promptly, how soon could you have finished that outside work? You have testified you could have finished the whole job November 1st.

A. We planned the completion of the approach work, and could have accomplished it, by the 15th of August, sir.

156. Q. As a matter of fact, you were not able to, you could not complete it until February 14th, 1935, but you say it was on account of the delays of the Redmon Heating Company, primarily?

A. Yes.

157. Q. Now, after the Redmon Heating Company—

A. Not only primarily, but altogether, in that instance. We were dependent upon them, absolutely, there.

158. Q. Well, I mean, that was the main cause?

A. Yes.

132 159. Q. Now, after the Redmon Heating Company abandoned its contract, which was terminated by the Government on July 26th—

A. I expect it was June.

160. Q. What did I say?

A. July.

161. Q. June 26, 1934—

The COMMISSIONER. June 27, 1934, Redmon abandoned the contract.

162. Q. Was there anything, substantially, done during the next week, or two or three weeks, by anybody representing Redmon?

A. No. There was not. I will have to think—it was about twenty-five days, or twenty days, anyhow.

163. Q. We will show the exact time?

A. Yes; I have got proof of the exact time.

164. Q. Now, the Maryland Casualty Company was on the bond of the Redmon Heating Company, as shown by the record. What was done then with reference to taking over the Redmon work, shown in his contract here? What did the Maryland Casualty Company do, and what did the Government do about it?

A. I don't think I know, sir; except I know it happened.

The COMMISSIONER. What did happen?

A. The Virginia Engineering Company came and took charge of it. I know none of the details of how they came to take charge.

I do recall, however, that they talked with us, because they
133 had at least one competitor, J. L. Powers, of Bennettsville, South Carolina, a plumbing contractor of some importance, came to Roanoke, and estimated on the work, and probably he may or may not have given a bid—I don't think he did—to Maryland (Casualty Company).

165. Q. After the Virginia Engineering Company took charge of the completion of the work, did they complete it prior to the 14th day of February, 1935?

A. No, sir; it would not have been possible.

166. Q. Were you interfered with by the conditions existing while they were undertaking to do that mechanical equipment work?

A. They were doing it, and as splendidly as I thought possible for a person to do. We were happy in the thought that now they have somebody that is going to do the work.

167. Q. Was it physically—

A. They gave us a great deal of trouble, disappointment and problems in the first four or five weeks, so I would say, up to the first of September, we didn't get our stride, because along there, it took anyhow about that time, and my recollection is they did as well as anybody could have done.

168. Q. But why did they have that delay? Why were you delayed in getting under way?

A. They could not possibly have tied up with what had happened there any quicker than they did. They had to find out what Redmon had bought and what he hadn't bought, estimate the details of the pipe sizes, and things of that kind—
134 they couldn't jump in the next morning and commence to do something.

169. Q. Had Redmon left any equipment there to be used, and that could be used, in the completion of his contract—or was anything else, any considerable amount of materials?

A. He never had any materials there at any time, sir; of any consequence.

170. Q. Did he ever employ a superintendent—was J. T. White there? When did he get there?

A. He went there early in the work, sir.

171. Q. Was it March 19th that he got there, under the Government orders?

A. I don't know.

172. Q. Now, in addition to this superintendent, J. T. White, did they have any substantial amount of labor, of any kind, prior to the time when Redmon (quit)?

A. So pitifully small as to make us be disheartened.

By the COMMISSIONER:

174. Q. Let me see if I get your testimony: Redmon abandoned the job June 27, 1934?

A. Yes.

175. Q. The Virginia Engineering Company completed February 14, 1935?

A. Yes.

176. Q. The Virginia Engineering Company, after having some trouble started, and when it did get under headway, did as good as anybody could?

A. That is my testimony, sir.

135

By MR. BALL:

177. Q. Now, I was asking about delays in your outside work. Let us go to the inside work. Tell us concisely and in a general way, tell us whether Redmon's delay and final abandonment of the work, of his contract, interfered with you and caused you delay, and, if so, in what general ways did that happen?

136

A. Much more serious, even, then the outside; because there were a group of fourteen buildings, of which, certainly, ten or eleven were vitally affected by something that that man had to do in there, in order for us, in some cases, to put in our foundations, in other cases to put down floor slabs, in other places to build brick walls pending their having their work done, information as to radiator spaces, and a number of problems in the electrical work in the buildings. That matter of the electrical work, you can't leave out, none of that—you can't put in electrical work afterwards. Now, some of the pipe, it doesn't happen to be in this particular building, but frequently, you see, the steam pipes are exposed. That is another matter that we were so badly handicapped with, on the heating, and all these sleeves and the locations, we would have to go and see where all the four-inch, and the three-

inch pipes were to go and put a sleeve in the form we had there, and he couldn't do it; he didn't have the people there to do it with, and we had to wait on him for that small matter.

178. Q. Were there very many of these sleeves to be put in?

A. Oh, there would be, approximately, why there would be three hundred of them on the floor, certainly three hundred in the building.

179. Q. It was the duty of Redmon, under his contract, to furnish these sleeves, and to indicate the location of the sleeves?

137 A. That's right.

180. Q. Then you were either to place them or leave the place for the sleeve to go?

A. That's right.

181. Q. Now, a sleeve is nothing but a piece of iron or steel pipe of a certain size through which certain other pipes would go, to carry them?

A. Yes, sir.

182. Q. And that must be placed before you pour your concrete?

A. Yes. We can't cut out a hole in the concrete floor for the pipe to go through.

183. Q. Now, coming right down to your basement slab, which I understand simply to mean a concrete floor—

A. That is made right on the ground.

184. Q. What did Redmon have to do before you could build your basement floor?

A. His sewers, water lines, and main steam lines had to be run under there, that is where the steam came from the main heating plant, Building No. 13, he had to run his pipes all through the ground, and then bring them into the building. We could place no concrete floor slabs in the basement until after he had finished his work.

138 185. Q. If you graded your basement floor, ready to pour your concrete, and he didn't at that time have those things done, which should and ought to have been done, without them it would delay you, but what I wish to show is, in putting those pipes in, what did he have to do, to dig trenches for that purpose?

A. He did.

186. Q. And after he put the pipes in and filled the trench, what did he have to do?

A. He had to back fill, and ram or tamp it.

187. Q. Did you have to wait until it settled, before you proceeded?

A. Yes.

188. Q. That caused you a delay, did it?

A. Yes.

189. Q. After that was done, before you could pour your concrete did you have to do what is called fine grading before pouring your concrete upon the basement floor?

A. Yes, sir; that is the last dressing up of the dirt, before you put the concrete down, the fine grading, we had to do that.

190. Q. Now, then, what was the next class of work that he failed to do that delayed you? He had not put in these pipes under the slabs of the basement.

A. Visualize bath and toilet rooms with twelve, fifteen
139 or eighteen fixtures in them, and stacks had to go up and to the roof in there, they had to be done up to the point of that water closet, up to the lavatory, before we could go on, and, in some instances, visualize pipes in the lavatories, in individual office rooms, spaces there that had to be roughed in, and the pipe placed even after we had left places for them—chases.

191. Q. Chases are what?

A. A place, say eight inches square, in which we will leave out for the pipe to come in; but we couldn't place it until he got through, and, if we went on, in that case the mason couldn't plaster and finish because the pipe wasn't in it.

192. Q. So much for the pipes that go up in the building, now, what you call the pipes that go up in—

A. The soil and waste pipes.

193. Q. All those things had to be put in before you could do your part of the work? Is that true?

A. Yes.

194. Q. You say he did not do that in harmony with your progress—the actual progress on the job?

A. He did not.

195. Q. And, are you, or not, in position to give the details of delays in each one of those instances?

A. I could not, not any special instance of that, on account that it was so general. It applied in more or less degree in every one of the buildings.

196. Q. Now, the provisions for electric conduits, was that also true with regard to that?

140 A. Very much so.

197. Q. Now, what else on the interior of the buildings did he fail to do, or do, that interfered with you, and prevented your completion by November 1st?

A. Nothing, except in the difficulty (he was in), he was so far behind, he had made it impossible for himself or anyone else to really start doing something, the first of July, and finish the work on time; he should have been doing all this volume of work from about the 15th or 20th of January.

198. Q. Well, could he have started in January and done his outside work, which consisted of digging the trenches and laying these various pipes, which are indicated in the plot plan, Exhibit 10?

A. Yes; he could not have only have done it, but it was his duty to do it, it was the general practice to do it, and the failure to do it was a crime.

The COMMISSIONER. Did the Government urge him to do it?

Mr. BALL. Yes; we have correspondence, which we have gotten from the Government, which we will introduce to show that.

199. Q. Do you say, then, that if Redmon had gone promptly to work, diligently and reasonably, that he could have completed all of his work so as to keep out of your way, and permitted you to finish November 1, 1934?

A. I am sure that is true.

141 200. Q. Are you familiar with some of the delays that were caused in connection with the boiler building, No. 13?

A. Yes.

201. Q. If so, give us a general description of what delays were caused there?

A. That was a wonderful piece of work—the boilers in that house, they must have cost forty or fifty thousand dollars. It was a great program of steam heating, handling all the fuel and all of the mechanical devices in connection with it, which, in order to get through, should, on the 23d day of December, when that man got the contract, he should have started then, and to have occupied himself right along with the details of it; because he first had to buy it, and second he had to get his drawings from the manufacturer and submit them to Washington, then they had to come back to go to the factory, as in orderly sequence always happens. There was no time—I was very much put out about that, because we could not build the brickwork in the boilerhouse, we couldn't do anything with the Virginia Bridge and Iron Company on their structural steel, which was a part of the contract I had, I was buying it from the Virginia Bridge & Iron Company, and they could not get details from us. I pleaded with Redmon to give us something that would help us locate our steel. Not a chance.

142 202. Q. Redmon isn't a manufacturer of boilers or the things that were necessary in connection with the boilerhouse?

A. No.

203. Q. He had to buy those things, and they had to be manufactured?

A. Yes.

204. Q. In order to do that, is it a fact that the manufacturer would prepare shop drawings and submit them to Redmon, first,

and Redmon would then send them to the Department in Washington, they *they* had to be approved there and returned to Redmon, then to the manufacturer, before the article could be fabricated!

A. Correct.

205. Q. Now, was it any of your duty to urge on Redmon the furnishing of the shop plans to the Government, or was this duty—

A. I had no duty in the matter. For the first month or six weeks, we had no right to infer that he was not doing something, because the fact that we didn't see him get the boilers there, knowing the processes, didn't concern us; but the moment we realized how inadequate he was in the field, by reason of our having found out something in correspondence, some two or three items—we would talk to Colonel Tripp about it—more particularly to Captain Felthem, wasn't there something Blair could do to help these people get lined up? You see, our success was dependent upon that man.

206. Q. Well, incidental to that, and early planning of the boilerhouse and installation of the boilers had an effect upon you in regard to the general plan and the expense of the plan?

A. Very much so.

207. Q. Will you explain how that affected you?

A. Well, in the first place, the brickwork, there was, in fact, a lot of brickwork on that job; not the quantity but the kind of work involved, going about forty or fifty feet high, and handling it through, and we couldn't do anything without the information as to the boilers, not even start, and then, after they got started, he never furnished the boilers, they were never in the boilerhouse when he left there—I believe I am right about that; he hadn't gotten anything in the boilerhouse at the time he left there, and it should have been in, certainly by the 15th of April.

208. Q. Your subcontractor under the structural steel work of Building 13, was the Virginia Bridge and Iron Company?

A. Yes.

209. Q. And they were so handicapped that they were prevented at all times in their efforts to fabricate and ship?

A. They did everything in their power.

144 210. Q. They were furnishing shop drawings promptly?

A. In every way, they cooperated, but they were handicapped.

211. Q. Do you recall what part of it in the boilerhouse was that gave them the most trouble? If you don't, we will get it elsewhere. Now, if those boilers had been put in there so that by the first of November, you could have finished your work,

would you have had any expense incident to the subject of the cold weather which followed—your personal performance?

A. Oh, no.

212. Q. Did you incur a heavy loss, or a loss, by that failure?

A. Very much so.

145 213. Q. You were under the duty by the contract and specifications to furnish temporary heat in certain areas?

A. If I had to, and our estimate of the time for the completion of that building was the first of November, and you will find in our estimate, somewhere, a small allowance for temporary heat, because of the possibility there of there being something that had to be dried out the last few weeks of October, or the first of November.

214. Q. I will ask you whether, on account of the cold weather you were delayed in the performance of your outside work, and put to additional expense in connection with the laying of your sidewalks?

A. We couldn't possibly do the outside work at anything like the same cost after the 15th of October or the first of November, that we could in the summertime.

146-147 276. Q. Mr. Blair, I ask you the question, in all of your dealings with the United States Government, on the various contracts, about which you have mentioned, have you ever before presented or prosecuted a claim against the Government?

A. Never.

277. Q. Mr. Blair, in the force that you had at the job, Neal Andrews and Mr. Ellingsworth were not sent there, in the first place, were they sent —

A. They were sent there from the force of the Montgomery office.

278. Q. Now, I wish you would explain, just briefly, to the court whether it was necessary, and why it was necessary, for you to send them there, and what duties they performed in connection with this job?

A. In my judgment, it was necessary to do everything in my power to overcome the serious handicap under which we were working. Our problems had multiplied beyond anything that I could have dreamt of, basically, in connection with the mechanical equipment installation, in connection with the quarrying of the stone, and in connection with the attitude of the Government engineer and his forces. It was my desire, somehow or another, to do the things that they wanted done, and to overcome what was such a serious situation as had arisen. We were harassed continuously by the construction engineer, Captain Feltham and

his forces. It was a puzzle to me how it could be so. We had on that operation the most experienced men that we knew. Mr. C. W. Roberts, as I told you, as our superintendent, has been continuously engaged for me in important operations since 1921, which would be fourteen years prior to this time. Fred Durden, equally as important, had been connected with our large operations for perhaps the same length of time, certainly as much as thirteen years. J. T. Roberts was equally competent and he was on, as was Mr. Devinney. Nobody could be more painstaking and more thorough in the details of their work than is Mr. Devinney in handling his work in his department of the office up there, and yet, with all of these competent, conscientious, zealous men, we were unable, it seemed to me, to satisfy Captain Feltham and his assistants. His principal assistant was a man named Dodd, who was impossible. Mr. Dodd exercised none of the qualities of a student of his work, or of anything but combatting us with, in many cases, petty problems, making much issue out of many things that were, nine times out of ten, being handled successfully, but maybe did not appear so. I have reference at the moment of the question of our requirement that we give preference, say to Veterans, anybody that we employed, if he was a Veteran, he must have first opportunity. We knew that. We were doing that. Every once in a while somebody would slip in or out of it; but he was unreasonable in his attitude towards us. In the question of the rate of wages, which has been touched upon, which will be brought out more definitely by others, the question of whether a man was a skilled mechanic or a common laborer, was brought up always in that intolerable way that left us no chance, I will say, for proving our case. It was so foreign to anything that ever happened before in the Blair organization, and I was stunned with it. There are two kinds of construction engineers, one is the constructive type, who enjoys seeing that the work goes along all right, who helps the contractor, recognizes the apportionment of the task, and wants to know what is going to happen, and how it is going to happen, a construction engineer who speaks of the job as "we," if you please, with a desire to be a party to the success of the undertaking, if you will, and do his part of it. The other is the type of the detective, a man who is looking out to see what happens to act on it after it has gone wrong, to make a big point out of a little matter.

The COMMISSIONER. Did you have him before?

A. Not Dodd. I had Feltham before.

279. Q. Why did you send these men there?

A. Then I was so keen to help that situation, and to help the situation as far as the mechanical equipment installation was concerned, and the attitude of the supervision that I did all in my power to make sure that we had every man that could be used there, and I felt that, in the case of Neal Andrew, Mr. Roberts and of Mr. Ellingsworth, that they had particular attributes showing in their faces, their zeal and their interest, that might have an appeal with the inspection forces and make them see we were overmanned, if you will, on that operation, 150 for that reason, but it seemed to be a necessity that I force that condition through, some how or another.

280. Q. Now, did Mr. Andrew and Mr. Ellingsworth go up there and stay at the job, or work back and forth between the job and your office?

A. Directly—I guess they were there in May.

281. Q. You sent them there from your home office, which was then deprived of their services?

A. It was.

282. Q. Now, Mr. Blair, in regard to the wage scale, in which it has been stated that Captain Feltham took the position that unless a man was a common laborer at 45 cents an hour, he must be a skilled mechanic at \$1.10 per hour, or approximately that way, recognizing no intermediates, and no apprentices, and no helpers, and no wage between the two, in all of your assignments, I will ask you now whether that in the same specifications that you have in this contract form 51, PW-51, had the schedule required you to make or recognize only the two classes of labor, skilled mechanics and laborers?

A. Never yet were we limited to that.

283. Q. Was that true of the carpenters?

A. It was true of carpenters.

284. Q. Reinforced steel workers?

A. Yes, sir.

285. Q. Tile and terrazzo workers?

A. I am not sure about the tile and terrazzo workers. 151 I am not as familiar with them as in the case of the carpenters.

286. Q. In all of your contracts, have you recognized that semi-skilled class?

A. Yes. The most definite evidence of that is the PWA—isn't it the PWA form, a printed pamphlet of four or five pages, that sets forth pretty nearly the exact classifications. That is the pamphlet we use in our present work.

288. Q. Had you had before general contracts outside of this particular one limiting you to dealing with skilled and unskilled labor?

A. And semiskilled.

289. Q. Now, your anxiety about this contract was based upon the reports you got from your assistants, and others there on the job?

A. Yes, sir.

290. Q. And your own observations and estimates made when you went there?

A. Yes, sir.

291. Q. Now, did you make some trips to the job, and to Washington, trying to harmonize things?

A. Yes.

292. Q. Well, just one other question: In all the instances of use of steel pans, steel forms, you have used them on other Government jobs?

A. Yes, sir; if required.

293. Q. Did these pans have to be bolted at the ends?

A. Where they lap?

152 294. Q. Yes.

A. No. This is the only job on which that was ever required.

Mr. BALL. We will rest here.

Cross-examination by Mr. WATSON:

295. Q. Mr. Blair, you have testified that you could have completed this job by November 1st, 1934? Is that right?

A. I did.

296. Q. How did you arrive at that date?

A. Primarily, in making the estimate of what time was necessary in which to do the work, in making up our bid. We would calculate, to ourselves, based upon the quantity of work involved, the nature of the work, the experience we had had in similar work, the time of the year, the availability of labor, and all of the conditions that would go into it—the practicability of our being able to get certain men on it, and—

The COMMISSIONER. The location of the plant (job)?

A. The location.

By Mr. WATSON:

297. Q. Now, as a matter of fact, if you attempted to complete that work by November 1st, 1934, you would have to have rushed the job? Isn't that true?

A. No, sir.

298. Q. The Government gave you four hundred and twenty days for the completion of this contract?

A. Yes.

153 299. Q. This contract was a PWA contract? Was that true?

A. Yes.

300. Q. The PWA, I believe, is interested that the work is spread over a period of time? That is true?

A. I don't think so. May I say, that by a PWA job, as far as the Roanoke Hospital is concerned, there was nothing mentioned about that, but we knew that the money came from the PWA appropriation.

301 Q. In other words, you didn't know that this particular job was one to aid the Public Works Administration?

A. Yes.

302. Q. Or to put men to work? Is that true?

A. Quite true, sir; because, among other things, they provided, as I stated a while ago, that Veterans should have preference. It was that phase of it—

The COMMISSIONER. Who signed the contract in behalf of the Government?

A. Colonel Tripp, or else General Hines of the Veterans' Bureau—the Veterans Administration signed it.

By Mr. WATSON:

303. Q. Colonel Tripp?

A. Yes.

304. Q. Do you know that this money for this particular job came from PWA funds?

A. Yes; I know that.

305 Q. And you did sign a contract, PWA Form No. 51?

A. Certainly.

154 306. Q. Is this the first time you ever handled a PWA contract?

A. I can conceive that this is the first one.

The COMMISSIONER. And the last one?

A. Oh, no; I have had numbers of them since then.

307. Q. Now, going back to this November 1, 1934, isn't it a fact that that was a date on the part of your engineers, Mr. Blair?

A. No, sir; I was certainly a party to it, in making our estimate. Our estimate will show, if you will, the number of months that we expected to be on the work. You see, we are all in competition with a great many other people, and we have got to figure closely—we could lose jobs by as little as nine dollars. We have to conserve every nickel that we can. In making an estimate, we have to estimate the time, for instance, a superintendent's salary nine months, eleven months—we might lose a job otherwise.

308. Q. As a matter of fact, the Government would not have permitted you to build that job—

A. We do build jobs, and would have in this case, but for the delays, we would have built the job in quicker time than was set for it, if we had not have been delayed.

309. Q. Did the Government congratulate you on this job?

A. No.

310. Q. Not, even when you completed it in January or February?

A. No, sir. They were deeply grateful to me, I am sure, though, because they couldn't conceive of anybody, with all the handicaps that I had; doing it.

155 311. Q. You testified that Captain Feltham and Mr. Dodd, Government inspectors, interfered with your work. I think, in the other testimony you testified that Captain Feltham was satisfied. Now, just which is correct?

A. I did not use the word "interfered"; I said "badly handicapped"—it would be the same thing—all right.

312. Q. It is all right, entirely?

A. When the Commissioner, in the other case, asked when we went down there about the ruling of Captain Feltham, but I said we had to do so, and it was satisfactory.

313. Q. Which handicapped you on this job, Captain Feltham or Mr. Dodd?

A. It was hard to distinguish between the two, sir. Mr. Dodd was his right-hand man. I tried to lay it on Mr. Dodd. Directly, it was Dodd.

314. Q. Captain Feltham insisted upon Mr. Roberts being upon the job, you testified?

A. No. You use my words wrong, there. Captain Feltham had expressed himself that it would be fine if I had Mr. Roberts; if I appointed Mr. Roberts to the job.

315. Q. That was shortly after you were awarded the contract?

A. Yes, sir; he was writing to tell me that he was going to be inspector on the job, and he would be happy if I was going to assign Mr. Roberts the job, or words to that effect.

316. Q. Now, tell us just how Captain Feltham interfered with this work down there, Mr. Blair? Just what did he do to hold you up?

156 A. By failing to be constructive, by delaying in making decisions, by requiring us to wait certain times for his forces' pleasure in doing things, in exacting of us conditions that were bad, for example, when we first started to work, of course, we wanted to build a telephone line, put in a telephone line that would be better than, as, for example, bothering anybody at his office, with which I had nothing to do, as far as that is concerned, it seemed;

in such petty things, that he didn't think the Government should have to spend any money on that. In the matter of the water supply there was—the details of, that can be better explained by somebody else—but he declined for quite a while to let us use a temporary water supply from a reservoir which was on the premises, and which we were to wreck during the course of our work.

317. Q. A telephone is an incidental, small matter, isn't it?

A. Oh, yes.

318. Q. What else did he do that delayed or checked you in all your work?

A. He required of us that we use an outside scaffold on our brick work, which was absolutely contrary to the common practice.

319. Q. What did the specifications call for in that regard?

A. It makes no reference to that.

320. Q. He was the Government inspector, now?

A. He was. However, the way in which we accomplished anything is not his prime obligation; his prime obligation was
157 to see that we did the things properly, but not the method we pursued in doing so.

321. Q. In other words, he made you adhere to the specifications and contract, strictly; is that true?

A. Oh, no; I don't mean that, at all, sir, because that is our desire, to carry out the specifications and the contract requirements, sir.

322. Q. But, in this particular case, he made you do? Is that right?

A. Well, he made us do things that were not within his business as inspector.

323. Q. In other words, he was a good Government inspector? Is that true?

A. We don't think so, sir.

324. Q. You don't?

A. No.

By the COMMISSIONER:

325. Q. Your theory is that you, as a contractor, had to deliver to him work done in a certain way; but the means by which you arrived at the result under your contract, belonged to you?

A. That is the point I was making, sir.

326. Q. He insisted that you should do it a certain way, and you claim you had the option, provided you produced the finished result required under the contract and specifications—did what the contract called for?

A. Yes, sir; that would practically cover the point.

By Mr. WATSON :

327. Q. Now, did Captain Feltham enforce or change the contract in any respect?

158 A. Captain Feltham would, in many instances, require of us things that we did not think were a part of our contract, or that he had the privilege of asking us to do, or that it was expected for us to do, or expedient for us to do. There was one stage of the game when my superintendent inquired of me if we could not, somehow or other, defend ourselves against these things. I says, "Why, no; we must go on; we are big enough, we are experienced enough; it must be that we can satisfy Captain Feltham."

328. Q. Well, you didn't answer all my question. Did he do anything to change this contract?

A. I can't answer that yes or no. That is not answerable. He didn't sit down to change the words in the contract, no.

329. Q. No; but did he do anything in the performance of the work, or in his instructions to your men, your superintendent, that would materially change this contract?

A. Only one instance that I have mentioned to you, and which will be brought out very much more in detail, we were retarded and at considerable expense as to our outside scaffolding and inside scaffolding, having to do with our brickwork, which you might say is contrary to specifications, because the specifications do not cover that point.

330. Q. Did you make any complaints to the Washington officers with reference to Captain Feltham's tactics?

A. In writing; seldom.

159 331. Q. I don't hear your answer!

A. In writing, seldom. I will explain that in a moment. In conversation, frequently. I have a high regard for Colonel Tripp, I admire him greatly, and on the occasions of my going to Washington, I would discuss with him, I don't call it "discussion," either, because he did not take much part in it. I talked with him about that part, those problems that were most intolerable, as far as I am concerned. Now, the reason I say 160 "seldom" is because I am sure we will have, or there will be in the record, correspondence in regard to the attitude of Captain Feltham in regard to mixing the concrete, or which it would be better for someone else to give you the details—I can give you the points. The amount of concrete there was vast. We got, first, a paver mixer, meaning a very large concrete mixer, of a particular type. We then found it would be better if we had a central mixing plant, to facilitate our work, and Captain Feltham approved one and disapproved the other. He withdrew

his approval of the first one, and when we came back to the point with him, we wanted the privilege of using either, as happened to suit our particular conditions at the time. He refused to let us do it. So we took the matter up by correspondence. I feel sure Neal Andrew can testify about this better, for he is the man that handled it for me. Of course, they overruled Captain Feltham in that case.

332. Q. You stated, or testified, that there was a form of complaint filed with the Department, later?

A. In this particular instance, I suspect there are others; I recall that one I am speaking of, which had reference to the use of a concrete mixer as against a central mixing plant; that is one I do know that I recall.

333. Q. But no complaint has been made with reference to the scaffolding, mentioned a minute ago?

161 A. I think not, sir; our experience by the time we go to that was such, that it would have been considered futile.

334. Q. Well, then, most all of your complaints were made orally, and was that true of Colonel Tripp, the contracting officer in Washington—

A. Yes, sir; I hesitated only because I didn't like the use of the word "complaints," I would substitute a more proper term.

335. Q. Well, use the word "disputes" then—disputes between you and Captain Feltham?

A. I would like to substitute another word; I would like to—

The COMMISSIONER. "Differences"?

A. Frequently discussed with the Government about Captain Feltham, the differences, and he—I had a word—that will do, differences, that were between Captain Feltham and me, but I am trying to differentiate between a formal presentation—

By Mr. WATSON:

336. Q. That is what I am trying to get.

A. I made no, or very few if any, formal presentations—only one occurring to me now, that in connection with the concrete.

337. Q. We all know the natural differences of opinion arising on these jobs between the Government inspector and the contractor, but I am trying to bring out whether or not this complaint was made by you formally, by letter?

A. I have answered that, I think.

162 338. Q. It is and it isn't? Is that it?

A. No. The answer was, as I recall, one instance in which we formally complained about the use of the concrete mixer, or the mixing plant.

339. Q. And that no other complaints, or no other—

A. In writing?

163 340. Q. In writing, has been made to the Department?

A. I am sorry to have to tell you, in my recollection, I don't recall that.

341. Q. Now, to get to Redmon's contract, did Redmon start in on the job with your men at the same time?

A. Not at the same time. But not very long after that, it seems to me, he made a start by building a tool house.

344. Q. The date of your contract is—

Mr. BALL: December 2nd.

By Mr. WATSON:

345. Q. December 2nd—now, in how long a time after you started work did Redmon start in on his end of the job, Mr. Blair?

A. He made a start in name, but not in fact, within probably three weeks after the first of January; but he never did scratch the surface all the five months he was there.

346. Q. You noticed his laxity of procedure three weeks after you started?

A. No.

347. Q. Three weeks after the first of January?

A. I didn't notice his lack of procedure, because I could not judge of him that quick. Let us say five or six weeks, because, I didn't have a right to judge of him; I was concerned because he, apparently, was not there; but, you see, his greatest responsibility and failure, as it developed afterwards, he wasn't working in those first months getting ready to do something which
164 he should have been doing. We couldn't tell whether he was doing it, or not, there in Louisville, where his office was—all these shop drawings, and those preliminary matters, whether they had been gone into, or not.

348. Q. Did you complain then to Colonel Tripp about the delay on the part of Redmon, in five months?

A. I am safe in saying, after the first five or six weeks operation that Colonel Tripp was in some way informed of our feeling of seriousness about that situation—at intervals of every two weeks he was informed.

349. Q. Did Colonel Tripp come on the job and examine it?

A. Did he come on the job himself?

350. Q. Yes?

A. I recall his coming only once, and that was probably in August or September, sir.

351. Q. Now, you performed a number of Government contracts, Mr. Blair?

A. Yes.

352. Q. I am asking you now if anyone, in your opinion, do you believe that the Government would have wanted a contract with Redmon, if they knew he would cancel out on it before it was turned in?

A. Yes, sir; I know the Government would, the rules of the Government are such, sir, that character, reputation, experience, ability, are not considered in the awarding of a contract. I can prove it, if you will, and, obviously, it is a right rule.

165 353. Q. The Government had other contracts with Redmon, all of which contracts had been performed satisfactorily?

A. Redmon did satisfactorily contract for the Government?

354. Q. I am asking you is that true?

A. I had never heard of Redmon before that time, sir.

By the COMMISSIONER:

355. Q. Why do you say that is a good rule?

A. Because, if you try to discriminate, sir, immediately the contracting officer is confronted with the question of my judgment, "I believe Blair is not competent to run that job." Who is he to say Blair isn't competent? And, immediately, there comes up the question, are there some bidders that got contracts, when it is said they were not the lowest bidders, but the Government let the contract to him? Why?

356. Q. You don't have to elaborate for me. You said what I anticipated you would say.

Mr. WATSON. That is all right for me, too.

A. May I say—you may put this on the record or not—I was sorry for the Government, I was sorry for my friend Colonel Tripp. I would have done anything. The correspondence showed where I begged of him, "Can't I cooperate with you sometimes in putting this thing through, what can I do to get it behind us? The job is dependent upon it."

166 357. Q. Now, you testified on your direct examination that the Virginia Engineering Company, who took over the Redmon contract did the thing very quickly in coordinating their work with yours?

A. As quickly as anyone could have done, I said. It was not quick; but nobody could have done it any quicker.

358. Q. After the Virginia Engineering Company took over the contract, there was no delay on your part then?

A. No. I don't think we could blame anything on them—they cooperated very much.

359. Q. Your alleged delay is prior to the Engineering Company taking over the contract?

A. Yes; except the fact that they could not have possibly taken it up immediately on getting the contract, and immediately cure the trouble. It was, maybe, five weeks between the time they were awarded the work and the time they were going to the extent of—

The COMMISSIONER. Considering what they inherited from the Redmon Company, they were doing a good job?

A. That's it.

360. Q. But you did complete it, your contract, on time?

A. We certainly did, and it is a miracle.

By Mr. WATSON:

373. Q. Now, on your trips to Washington on this job, who did you see?

A. Who did I talk to?

374. Q. Yes, sir?

A. Mr. Price, sometimes Mr. Talbot, and Colonel Tripp.

167

By Mr. KILPATRICK:

375. Q. They are all there at the Veterans Bureau?

A. They are the head of the Construction Division.

376. Q. Up in the Veterans Bureau?

A. Oh, yes. Mr. Talbot was an architectural man, sometimes had charge of the mechanical equipment. I had no little business with him, I think, approximately—

By Mr. WATSON:

377. Q. You testified that Colonel Tripp did call at the job?

A. He visited the job, I recall, about the first of September, and I said I thought it was his only visit—I am not sure.

378. Q. That is the 1st of September 1934?

A. Yes.

379. Q. Was that the time that he ordered your company to remove certain partitions that weren't put up properly?

A. Colonel Tripp never ordered us to remove any, I am sure, if partitions were removed. If any were removed, it might have been on the occasion of his visit. It wasn't his visit that occasioned it. It would have come through Captain Feltham, sir. May I say, also, Colonel Tripp would not have ordered me to do anything—he would have called my attention, "We think that partition is out of whack," and I would have said "I will be glad to fix it."

380. Q. You do know the fact that he ordered some partitions removed?

168

A. It is quite likely in building that much house, doing all that work, that some partitions being wrong.

381. Q. These time keepers and superintendents, Mr. Blair, how did you pay them? How did you pay Mr. Roberts?

A. Mr. Roberts was a salaried man, sir.

382. Q. Mr. Lacey?

A. Salaried man.

383. Q. And Mr. Durden?

A. He was a salaried man.

384. Q. Mr. Devinney?

A. A salaried man.

385. Q. Mr. Mylam?

A. Mr. Mylam?

386. Q. Yes?

A. He was a salaried man.

By Mr. BALL:

387. Q. May I ask a question, the salary paid them was from the Montgomery Office, or were those men paid on the job?

A. Those men were straight salaries, all right, been with the organization fifteen years, draw their salary from the Montgomery office.

By Mr. WATSON:

388. Q. Were any of those men to be paid on a percentage basis on contract?

A. In no instance. No bonus, if that is what you mean to say.

389. Q. How about Mr. Ellingsworth, and the others? How were they?

A. Salaried men.

390. Q. N. G. Andrews?

A. Same type, sir.

Redirect examination by Mr. BALL:

391. Q. Mr. Blair, you were asked about Captain Feltham and C. W. Roberts. Did you receive a letter from Captain Feltham, dated December 23rd, addressed to you as "My dear Mr. Blair" "I wish to congratulate you upon your success of being awarded the contract for the new Hospital at Roanoke, Virginia. You are possible aware that I will have general supervision of that job, and I trust that you can see your way clear to assign Mr. C. W. Roberts as your superintendent as Mr. Roberts and I were very pleasantly associated at Atlanta, and I think we thoroughly understand each other, so I anticipate no trouble whatever in this work. I will thank you to wire me Tuesday morning at Atlanta if you

will be in Roanoke on the 27th, December 27th, &c., did you receive that letter?

A. Very much so.

The COMMISSIONER. Did you introduce that letter as an exhibit?

A. That is the letter I have been referring to that I did not see when I was looking. That is the letter.

The COMMISSIONER. That is one letter I think both of you want in.

170 Mr. WATSON. Subject to verification.

The COMMISSIONER. Plaintiff's Exhibit No. 21 (marked).

Mr. BALL. That is dated "Construction service, Atlanta, Georgia, December 23, 1932." Signed "P. M. Feltham."

392. Q. Mr. Blair, did the Government, or any of its representatives, ever say to you that you must extend the time of the performance of this contract for the entire four hundred and twenty days?

A. No.

393. Q. On the contrary, what did they say?

A. They said I must do it within 420 days or pay a penalty.

By Mr. WATSON:

394. Q. That is a part of the contract, isn't it?

A. Yes.

Mr. WATSON. We object to it.

By Mr. BALL:

395. Q. Did any Government representative in this matter urge you to press the matter—even to the extent of putting on double forces, and things of that sort, and especially with reference to getting it ready for the visit of the President in October of 1934?

A. Very much so. That was a serious problem, which involved the coming of the President of the United States, and that was very important in the eyes of the Construction Division of the Veterans Bureau, and I did my best to emphasize our work in certain ways, so that it would be as presentable as possible for the visit of the President, which was on the 15th day of 171-173 October, and, obviously when the Virginia people didn't get going good before the first of September, we had no chance to have anything actually finished. But we could and did make a special effort on the building number one—number one or number two—two, isn't it—number two, because it is the most outstanding building, and we accomplished miracles. That is the reason of Colonel Tripp's coming to Roanoke at that particular time, the first of September, to plan for that occasion, and we had nothing—he asked nothing of us particularly except

that we should do what we could to make that thing presentable, and how near could we come to making it look finished during that time.

Mr. BALL. At this point, we offer certain documents furnished to the Court by the Government, called "Contract Progress Report of Redmon Heating Company, on the Roseburg, Oregon, job, consisting of—I don't know how many sheets—

The COMMISSIONER. Several sheets.

Mr. BALL. With the letters accompanying, also from the defendant.

[Documents shown to Mr. Watson.]

The COMMISSIONER. I am inclined to admit them—overrule the objection. I think I better admit them. Note exception to my ruling. Mark it Plaintiff's "Exhibit 22" (marked, being 24 photostat sheets on forms and interspersed with letters having reference to the reports). If the Government's position should be right, they will go out; if it should be wrong, the Court will have it.

174 Re-cross-examination by Mr. WATSON:

398. Q. Mr. Blair, this contract with the Government does not provide the method by which the brick is to be laid on this job?

A. No. It provides kinds. The results you are to get.

399. Q. It doesn't provide for any particular method?

A. No.

400. Q. You have never made an issue in writing with the contracting officer, Colonel Tripp, under Article 15 of this contract by filing your formal complaint?

Mr. KILPATRICK. We object. He asked for construction of the contract, and Mr. Blair is not a lawyer.

The COMMISSIONER. Did you ever file any formal complaint of his rulings in that respect?

Mr. WATSON. That is what I mean.

The COMMISSIONER. Don't ask him to interpret the contract.

A. In making my answer, as far as I know, we did not. There are certain times, possibly, that my superintendent on the job did something of that nature without my knowing it. But, if it was done in Montgomery, I don't recall having done it.

401. Q. Now; you weren't required to comply with the rulings of Captain Feltham and Mr. Dodd, were you?

A. My dear sir, that was our greatest problem. I am telling you in all seriousness that more than once on
175-176 that operation words were used by Captain Feltham almost exactly this: "All right, maybe you are not obliged to do it, but you will be sorry if you don't."

Mr. WATSON. That's all.

The COMMISSIONER. You are excused.

(Witness excused.)

Mr. FRANK SIDNEY McFADEN, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct examination by the COMMISSIONER:

1. Q. Give us your full name.

A. Frank Sidney McFaden.

2. Q. How old are you?

A. Thirty-nine years old.

3. Q. What is your occupation?

A. Estimator, engineer, and estimator.

5. Q. Have you any financial interest, either directly or indirectly, in the outcome of this suit or proceeding? In other words, are you a stockholder in plaintiff company?

A. No, sir.

6. Q. Is your salary to be determined, up and down, according to the outcome of this suit?

A. No, sir.

By Mr. BAIL:

7. Q. Mr. McFaden, what were your special duties which you had in Mr. Blair's organization, with reference to progress schedules of this Roanoke job?

A. I made a study of the individual buildings, and made up a preliminary progress schedule, in cooperation with others in the office, asking questions, and, after making up this preliminary schedule, made it up, I would say in duplicate—certainly
177 more than one copy—sent one copy to our superintendent at the job for him to verify certain dates of beginning and completing certain work.

8. Q. What experience in that character of work had you had in Mr. Blair's office?

A. I had been in Mr. Blair's office, at that time, nearly—about eight and a half years, and had checked progress made on other projects similar to this, and made up similar schedules on other projects.

9. Q. How did you do that work? Did you take the building plan, and the other things, blue prints, that were connected with it, and examine and study them, in order to determine how much time it would take to perform the contract?

A. Yes, sir; judging by studying the plans, judging by considering the buildings, and what importance those buildings would hold to the whole.

10. Q. Just explain, very concisely, to the Commissioner, exactly what you did to arrive at this progress schedule, so that the Court may determine its accuracy. How did you go about it, what did you do?

A. Well, we tried to visualize each building, to build it through from the beginning; that is, from the beginning of the excavation, knowing the quantities involved it was going to take
178 to do that, the quantities involved in the concrete, from footings, all through the different plans, how long it would take to do that, and when we followed on through the different branches of the work, when they would start and finish.

By the COMMISSIONER:

11. Q. Did you deal with quantities only, or did you follow that—what steps did you take next?

A. The quantities would determine the length of time it would take to perform certain work, visualizing the number of men that would be required.

12. Q. Supposing you got so many tons as the quantity of cement, could you tell how long it would take to place that cement unless you knew where it was to be placed, and how?

A. No.

13. Q. If you put it only in one block, or if you put it around in different buildings?

A. Yes, sir. Unless you knew where it was to go, that was a consideration.

14. Q. You would have something besides total quantities wouldn't you?

A. Yes, sir. Of course, in this type of construction of buildings, I had that information.

15. Q. I see.

A. I had that.

179 By Mr. BALL:

16. Q. What part had you played, if any, in estimating the cost of this job, before the bid was made?

A. The greatest part was estimating the quantities in the main buildings, and several other buildings, I would say four or five, maybe. There was a great deal of pricing on some of the work.

17. Q. Well, have you spent any considerable time with the building plan, and the other plans that were supplied to Mr. Blair in estimating the cost of performing the contract?

A. Yes, sir.

18. Q. Were you, in fact, very familiar with all of the data down there in the erection of these buildings?

A. I was; yes, sir.

19. Q. Had you, from your former experience in doing similar work, helped to estimate progress, at least, cost of performance?

A. I think so; yes, sir.

20. Q. Now, in estimating the cost of performance, was it necessary for you to take into consideration the length of time which would be required for its performance?

A. Yes, sir.

180 21. Q. Isn't that a fact because you charge all your expenses that was going to be incurred on the job of monthly salaries, both in the home office and in the field?

A. Yes, sir.

22. Q. Then I ask you whether it was a vital thing for you to estimate accurately the length of time that would be required for the performance of this contract?

A. We considered it to be so, and I think it was generally so; yes.

23. Q. Did you make your estimate on the basis of completion between January 1, 1934, and February 14, 1935, a period of thirteen and a half months?

A. No, sir.

24. Q. Upon what basis did you make your estimate—how many months?

A. How many months?

25. Q. How many months before completion?

A. As I remember it, ten months; that is, to complete it November first.

26. Q. To complete it November first?

A. Yes.

27. Q. So, when that bid was finally arrived at, made to the Government, it was based in the office on ten months for the performance of the entire contract?

A. Yes, sir.

181 28. Q. If you had developed that it would take thirteen and a half months, then, would it, or not, have been necessary to have added salaries for a great many of the employees concerned with this contract for the additional three and a half months?

A. It would have.

29. Q. But that you did not do?

A. No, sir.

30. Q. So you say, in a general way, that the whole estimate of the cost of the bid under the contract were entered into on that basis in the mind of Mr. Blair, that he would perform that contract in ten months?

A. I am sure of that.

31. Q. Now, in order to do that, was it, or not, necessary for you to make a schedule—

A. Yes.

32. Q. Of the progress, of the proper progress and of the performance of the contract?

A. That was considered necessary, all the way around, for the job force, as well as for us, in order to make it within that time.

33. Q. Then, in addition to arriving at ten months as the time of the performance, you say it was necessary to outline the progress to be made from date to date, to bring the time of completion to November 1, 1934?

A. Yes, sir; that would be a help in the construction.

34. Q. Now, did you do the work, or the most part of the work, for this preliminary progress schedule?

A. Yes, sir; I made up the original.

35. Q. And were you assisted by others?

A. Yes, sir.

36. Q. Who were those others?

A. Well, I would say, principally, by Mr. Clarke.

37. Q. By Mr. Clarke?

A. Yes, sir.

38. Q. Well, were you conversant with all the different work to be done in building, if you have it here, boiler house, 13, store house, 15, laundry, 14, garage, 16, and so on?

A. Yes, sir. I was acquainted with all the buildings.

By the COMMISSIONER:

39. Q. Was that work all done, either by you or under your direction?

By Mr. BALL:

40. Q. This preliminary schedule?

A. It was my work, but I would say, if anything, it was done under the direction, of course, under the direction of Mr. Blair, and then of Mr. Clarke. I did actually make up the progress schedule.

183 41. Q. I ask you whether this document, which is dated in the upper right-hand corner "1-25-1934", consisting of four pages, and headed "Preliminary Progress Schedule", is your work, and your handwriting? •

A. Yes, sir.

42. Q. After that was done, was it submitted to anyone else in Mr. Blair's organization?

A. It was submitted to our job superintendent of the field forces.

43. Q. Before it went to the field forces, did anyone pass on it in the office?

A. Oh, yes; Mr. Clarke went over it quite thoroughly, and I am sure Mr. Blair saw it and was consulted.

44. Q. Was Mr. Clarke experienced in that sort of work, making estimates of progress schedules and estimating time?

A. Yes, he has been with Mr. Blair a long time—before I came he was with him.

45. Q. He had been somewhere else before that, hadn't he?

A. Yes, sir.

46. Q. We will let him tell about that. All right. When this was presented to Mr. Clarke and to Mr. Blair, was it approved, or not, by them?

A. It was approved. Possibly some suggestions were made, on certain different things.

47. Q. Well, if any were made, were the proper notations made on this paper?

A. Yes.

184 48. Q. I see only one insertion here, and that is stricken out. Now, you say, after that was done, or you started to say, that it was sent to the field office. You mean to Mr. C. W. Roberts?

A. Yes, sir; Mr. Roberts.

49. Q. For consideration?

A. Yes, sir.

50. Q. And revision, if necessary?

A. Yes, sir.

51. Q. Now, you say a copy of that preliminary progress report was sent to Mr. Roberts?

A. Yes, sir.

52. Q. Did you see it after it was returned by him?

A. Yes, sir.

185 53. Q. Is this the condition in which the carbon copy was returned by Mr. Roberts, with certain alterations [showing paper]?

A. Yes, sir.

By the COMMISSIONER:

54. Q. How many pages?

Mr. BALL. Same thing, four pages, wasn't it?

A. Same four pages.

Mr. BALL. We offer that.

Mr. WATSON. We object to it.

The COMMISSIONER. I overrule the objection, note an exception.

Mr. WATSON. We except.

By Mr. BALL:

55. Q. Now, Mr. McFaden, that preliminary progress schedule is dated January 25, 1934, and the returned amended copy of it is dated February 19, 1934?

A. Yes.

56. Q. Now, did you make this progress schedule which is shown as Plaintiff's Exhibit 16 in this case, to Mr. Blair's testimony, covering the progress on each building, which I now show to you?

A. Yes, sir.

The COMMISSIONER: Dated March 30, 1934?

Mr. BALL: Yes, sir.

57. Q. Now, as a matter of fact, when that was made, and dated March 30th, was it based upon the work which we have already introduced, and which you have identified?

A. It is based on the preliminary schedules as rendered.

58. Q. Then, as a matter of fact, this chart 16, is a tran-
186 scription of the revised progress sheet that you made on January 2nd, and not changed?

A. Yes, sir.

59. Q. Of 1934?

A. Yes.

60. Q. Now, do you know anything about these figures which are placed in here, in red or orange color?

A. Those figures, I am sure, are mostly Mr. Clarke's, and they were—

61. Q. Any of them yours?

A. Yes, down here at the bottom, I think.

By the COMMISSIONER:

62. Q. Whatever figures—they are different figures?

A. Yes.

63. Q. Why were they put in?

A. They were following the progress of the job.

64. Q. As it actually went along?

A. Yes—the construction. This is not the one I handled. I made notes on the one I handled, on the side of the one I handled.

187

By Mr. BALL:

67. Q. In the course of the performance of this contract, did you have occasion, or instructions from Mr. Blair, or from Mr. Clarke, representing him, to go to Chicago?

A. Yes, sir.

68. Q. What was the purpose of that trip to Chicago by you?

A. We had been delayed, and we were being delayed, appar-

ently, by the fact that the radiator recesses, the sizes, were not approved for the mechanical contractor, and we had to furnish the metal trim and the frames of the recesses for these radiator frames for these radiator recesses, and my trip to Chicago was made in order to expedite the manufacturer of these 188 frames, and deliver them to the job.

69. Q. Do you remember about what time of year it was?

A. I remember it was a very cold day in Chicago. It was in June—the early part of June.

70. Q. Mr. McFaden, you say you went there to see about the radiators, and the size of the recesses in some of those buildings on the Roanoke job?

The COMMISSIONER. The radiators?

A. No. The frames for the recesses.

By Mr. BALL:

71. Q. The frames for the recesses?

A. Yes, sir.

72. Q. In which the radiators had to go—is that it?

A. Yes, sir.

73. Q. But the radiators were not coming from that place?

A. No, sir.

74. Q. Well, who was making those frames, or supposed to be making them? Was that the Modine Company?

A. No, sir; the Modine Company did the radiators.

75. Q. The frames, we are talking about now?

A. The frames were by the Central Manufacturing Company of Chicago, or the Central Iron Works.

76. Q. Did you go to see them about it?

A. Yes, sir.

77. Q. Did you accomplish anything?

A. I think so.

189 78. Q. What was the trouble about those frames, or the radiators that went into those recesses? Do you know about that?

A. We could not get approved sizes of openings.

79. Q. You couldn't?

A. No, sir.

80. Q. Well, did that interfere with the work?

A. We couldn't manufacture the frames.

81. Q. Now, which came first, the determination for the size of the opening, or the size of the frame? Did the size of the frame determine the size of the radiator?

A. The size of the radiator would determine the size of the frame.

82. Q. Did you have the sizes of the radiators?

A. No, sir.

83. Q. The Redmon Heating Company was to furnish these radiators—is that right?

A. Yes, sir.

84. Q. And Redmon—did Redmon buy the radiators from Modine?

A. I think so.

85. Q. And, now, what connection did Modine have with the Central Iron Company that was to furnish the frames?

A. Nothing, except—

86. Q. I don't mean financial connection, but connection with the performance?

190 A. Except that the radiator frames for the radiator recesses had a size, and the size of those was governed by the size of the radiators, and Modine furnished the radiators.

87. Q. Then, were the radiators which were to be placed under the windows, just as they are in this room?

A. Yes.

88. Q. And, before you could build the wall, you had to have the exact size, not only of the radiator to determine the size of the frame, but of the frame, itself, so that you could leave the proper space in the wall; is that it—was that the problem?

A. Yes, sir.

89. Q. Well, what was the trouble? Had there been a mistake made by somebody, Redmon Heating Company, or Modine Company, or Central Iron Company?

A. The Central Iron Works had nothing to do with it. There was a mistake by the—

90. Q. Made by Modine?

A. I think it was Modine, made in the—

91. Q. Was it delaying Blair in his progress?

A. It was; yes, sir.

92. Q. And that is what you were trying to do, to see if you could get the matter straightened out?

191 A. My trip to Chicago was to see about expediting the manufacture of the frames, because they had been delayed in getting approval of the opening sizes.

93. Q. Approval by whom? The Government?

A. From us. We had to get approval of the opening sizes from the Government, first; then we would let Central Iron Works have them.

94. Q. Where was the fault? That is what I want to get at. If there was any fault, whose fault was it?

A. The agent of the Government.

85. Q. What agent?

A. I would say the Redmon Heating Company.

By the COMMISSIONER:

96. Q. What did the fault consist of, what was wrong with it?

A. Because we were not able to get the definite sizes on the radiator recesses.

By Mr. BALL:

97. Q. You say, you call it Redmon—don't you mean the Redmon Heating Company, which had the contract for all the heating?

A. Yes, sir.

98. Q. That is what you mean to say?

A. Yes, sir.

99. Q. You say it was Redmon's fault?

A. Yes, sir.

100. Q. Fault in doing what? Redmon had the same
192 plans and specifications that Mr. Blair had?

A. Yes.

101. Q. Now, where was the fault—what caused it?

A. Well, I am afraid that I couldn't tell just what caused it; but the recesses were not shown correctly on the schedules handed to us.

102. Q. How do you know that?

A. We checked it by the contract and drawings.

By the COMMISSIONER:

103. Q. Was the fault with the drawings or with Redmon's construction of it?

A. As I remember it, it was Redmon's construction on it, or the drawings.

104. Q. Was it the fault of his construction or the drawings?

A. I think they got—I am afraid I cannot answer that definitely.

105. Q. You have answered, already, both way. Awhile ago you said the fault was the drawings. Now, you say it is the fault of Redmon. You will have to choose between the two?

A. I feel like this, that we must accept, had to accept, the schedule from Redmon, and that he furnished the wrong schedule.

106. Q. It was his fault?

A. Yes—I don't know whether it was the drawings, or what.

By Mr. BALL:

107. Q. Mr. McFaden, let me ask you that question this
way: Is it a fact that the Redmon Heating Company was
193 to furnish these things, and they were sent to the Veterans
Bureau and approved and sent back to Mr. Blair, and that

Mr. Blair's staff checked up on them and found that it was all wrong, and then it had to be revised, and you went to Chicago for the purpose of seeing if you could get the proper information to conform to the Government requirements? Is that it, or not?

Mr. WATSON. We object. That is a little bit too leading.

Mr. BALL. Well, I will withdraw that question. I just wanted to try to get the facts.

By the COMMISSIONER:

108. Q. I will put the question, Mr. McFaden. I see you have been telling what is the result of it—

A. It was serving my memory as to what had happened, and, actually, I don't remember everything. The schedule of radiator recesses came from the department of the Veterans Administration.

Mr. WATSON. It is still objectionable, the question is, and I ask that it be stricken out.

The COMMISSIONER. I will overrule the objection, and will note an exception.

Mr. BALL. We have no other questions.

Cross-examination by Mr. WATSON:

109. Q. Why was it necessary, Mr. McFaden, to figure 194 on the termination of this job by November 1st?

A. That was the basis of our original estimate on the job, as a whole—our bid was based on that length of time.

110. Q. You were familiar with the specifications and the contract itself, that specifies four hundred and twenty days for the determination of this contract?

A. Yes, sir.

111. Q. But, still, you based your estimate on terminating it November 1st, instead of February 14th?

A. Yes, sir.

By the COMMISSIONER:

112. Q. That is rather customary on all contracts, anyhow, isn't it, if you can do it? In other words, you are allowed the full period, and you see if you can come inside of it?

A. Yes, sir, it is customarily done.

113. Q. That is the rule, rather than the exception?

A. Yes, sir; that is the rule.

By Mr. WATSON:

114. Q. That is all for the benefit of the contractor, of course?

A. Well—

115. Q. Of course, by terminating it sooner, the contract period?

A. I don't see how it would benefit the contractor. Certainly

it would, if the contract would last that long. But the bid was based on the completion of it in ten months.

195 116. Q. On this trip to Chicago, that you made, you had a copy of the specifications prior to the time you had gone to Chicago?

A. Yes, sir.

117. Q. And you knew what was required under that contract, or of that specifications?

A. Supposed to.

118. Q. I want to know why you made this trip to Chicago: to rush along Redmon's contract, or Redmon's subcontractor?

A. No. It was to expedite the furnishing of materials to one of our subcontractors.

119. Q. Not one of Redmon's subcontractors?

A. No, sir.

Mr. WATSON: That's all.

(Witness excused.)

196 Mr. JOSEPH EDWIN LACEY, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

DIRECT EXAMINATION BY MR. BALL

By the COMMISSIONER:

1. Q. Give us your full name?

A. Joseph Edwin Lacey.

2. Q. How old are you, Mr. Lacey?

A. Forty-five.

3. Q. Where do you reside?

A. Montgomery, Alabama.

4. Q. What is your occupation?

A. I am in the building construction business.

5. Q. Have you any financial interest in the outcome of this lawsuit?

A. No, sir.

By Mr. BALL:

6. Q. Mr. Lacey, you are in the employ of Mr. Algernon Blair, the plaintiff in this case?

A. No, sir.

7. Q. You were, during the performance of this contract?

A. Yes, sir.

8. Q. When did you cease to be employed by him?

A. January 8th of this year.

9. Q. Have you any connection whatever with him or his business at the present time?

A. No, sir.

10. Q. What is your business now?

A. I am in the building-construction business.

197 11. Q. How long were you employed by Mr. Blair before you went into this Roanoke Hospital job?

A. About seven years and four months. From August 1926, until we went to Roanoke.

12. Q. What had you been doing for him prior to that time?

A. I spent about three or four years in his office. I was in the office, I would say, seventy-five or eighty percent of the time. I was in Northport, Long Island, New York, on Veterans Hospital, for about fourteen months.

13. Q. What work were you doing, what particular lines of work, were you performing?

A. In the office, I was checking details, and estimating. Buying.

14. Q. Did you have anything to do with the estimating on this Roanoke job?

A. Yes, sir.

15. Q. What part did you estimate?

A. I estimated building No. 4, and all of the approach work—that is, outside work.

16. Q. Building No. 4 is the dining room up there?

A. Yes, sir.

17. Q. The approach work includes all—includes what?

A. All of the work in Mr. Blair's contract, outside of the buildings.

18. Q. Did you have anything to do with the grading on the sites of the buildings?

A. Yes, sir.

198 19. Q. Did you have charge of that approach, or outside, work up there?

A. Yes, sir.

20. Q. Who worked with you on that job?

A. Mr. Milam was superintendent for me on that job.

21. Q. What part did he do?

A. He had charge of the same work that I had, under me. I was the field engineer on the job.

22. Q. What training and education have you had to fit you for that sort of work?

A. I graduated from Alabama Polytechnic Institute in 1913 as a civil engineer. Since that time, I have been engaged in construction work, and in working in Mr. Blair's office.

23. Q. You got a degree as civil engineer?

A. Bachelor of Science in Civil Engineering.

24. Q. You spent a four-year course, then, in Auburn?

A. Yes, sir.

By the COMMISSIONER:

25. Q. When did you graduate?

A. In 1913.

By Mr. BALL:

26. Q. Did you have a great deal of experience as a civil engineer, and that kind of work that is involved in the Roanoke job?

A. Yes, sir.

27. Q. Now, you say you had something to do with the estimate of Building No. 4, and when you got your estimate made, was it referred to or passed on to somebody else there in the office?

A. Yes, sir. It was turned over to Mr. Clarke when I finished it.

199 28. Q. Was your work on your estimate adopted or used by him?

A. Yes, sir.

29. Q. In making his bid on this contract?

A. Yes, sir.

30. Q. Do you know of any reason why it was not accurate?

A. No, sir.

31. Q. How much time did you take into consideration for the completion of the contract, so far as you were concerned?

A. I did not enter into that phase of the work.

32. Q. You had nothing to do with the overhead, salaries, and so forth?

A. No, sir.

33. Q. Which had to be taken into consideration in the estimate, and final estimate?

A. Not in the overhead sheet.

34. Q. But, just as these other things were involved? Well, it had to include your salary, and Mr. Mylam's salary?

A. Yes.

35. Q. Do you know upon what basis of completion of the building that estimate was made?

A. Yes, sir; made on the basis of completing the work on November 1, 1934.

36. Q. Now, that contract was made on December 2nd, and notice given on December 19th to go to work, and that notice was received on the 21st of December—the first of January that you should have begun work. Do you know when they did begin work?

200 A. I began work at Roanoke on or about December 20th.
37. Q. What did you do?

A. I staked off all of the buildings, and divided the entire project, worked it up into areas, so that I could determine the present elevations from that and be able to arrive at the amount of dirt, to be moved.

38. Q. Do you mean to say that you went to work even before the notice time, the ten days notice time had expired?

A. As I say, I went, I was working there before Christmas. I am very sure it wasn't later than December 20th.

201 39. Q. Well, look at this building plan, which is Plaintiff's Exhibit No. 9, by way of reference. Now, was that before you when you went there to lay out that job?

A. Yes, sir.

40. Q. Where is the axis line?

A. This line [indicating on No. 9] running from the—thru the center of Building No. 2, the center of No. 4, and thru the storehouse.

41. Q. Now, what is the axis line on a plan of that sort?

A. It would be the line from which all the dimensions are given. In this particular instance, the axis—everything worked to the right and left of this particular line. The dimensions are given on the axis from the starting point, right here [indicating].

The COMMISSIONER. "Right here" meaning at the bottom?

A. At the bottom.

By Mr. BALL:

42. Q. Where do you get the elevations?

A. The elevations are taken from the top of a stone post at the old Parrot House.

43. Q. Away over in the southeast?

The COMMISSIONER. In the lower right-hand corner?

By Mr. BALL:

44. Q. The right-hand corner of this plot?

A. That is correct.

202 45. Q. These cross lines are the contour lines?

A. Yes, sir.

46. Q. They show the elevations from a certain base point?

A. Yes, sir.

47. Q. By them, do you arrive at the quantities that had to be handled in general excavation?

A. Yes, sir.

48. Q. Along the outside work, as well as for the sites for the different buildings?

A. Yes, sir.

49. Q. Now, how long did it take you to lay out that work? You started before Christmas—what did you do, first?

A. I ran this axis line through here, first [indicating]; and after I got up into the grading areas, I ran lines to the right and left of the axis, put in stakes at fifty-foot intervals. I also put in stakes along the axis at fifty-foot intervals, which divided the entire grading area into fifty-foot squares.

50. Q. Is that the approved method of doing such work?

A. Yes, sir.

51. Q. And, on those stakes which you set at the angle of those fifty-foot squares, what did you put?

A. I indicated what would be the cut or the fill, or nothing to do. In some instances, there was no cut and no fill.

263 52. Q. Did you remain there continuously during the Christmas holidays?

A. I was gone two days.

53. Q. And came back?

A. Yes.

54. Q. Were you there when Mr. Blair and Captain Feltham were at Roanoke, along about December 28th, or—

A. Yes, sir.

55. Q. Now, when you got back there, how many men did you have at work on the job that you had started?

A. I had two.

56. Q. Is that all that were proper to be utilized in laying it out?

A. Yes, sir.

57. Q. After you got that done, did you begin any excavation?

A. We began excavation on or about the 14th of January.

204 58. Q. What did you do in the intervening two weeks?

A. I was continuing that work of laying out the plot.

59. Q. Did you get it all laid out?

A. Yes, sir.

60. Q. In the meantime, had Mr. Blair and Mr. Blair's forces built their field house and the Government field house or office?

A. Yes, sir.

61. Q. And storehouse for materials?

A. Yes.

62. Q. During that two weeks, there was as much progress as the situation permitted?

A. Yes, sir.

63. Q. Now, at that time, did you see Mr. Redmon, or any representative of his?

A. No, sir.

64. Q. In January, at any time?

A. No, sir.

65. Q. You understood that Redmon had the, what they call the "ME", or mechanical equipment, contract?

A. Yes, sir.

66. Q. And that that included all the plumbing and heating, and so on and so forth? You understood that his work was and what yours was?

A. Yes, sir.

205 67. Q. Now, what was the first excavation which you did?

A. We worked on the service group.

68. Q. What did you do there?

A. We did the general excavation for the four buildings in the service group. General excavation includes excavation to the under side of the floors.

69. Q. Basements?

A. For the basement, if the basement was there; if it was the first floor, it would be to that point; but in the case of one or two of these buildings, they had no basement; that would be to the under side of the first floor.

70. Q. So you prepared the service group, first?

A. Yes, sir.

71. Q. Did you, at any time, get in the way of, or interfere with the Redmon Heating Company; while you were on that job, at any time or place?

A. No, sir.

72. Q. Now, after you got that general grading done on the service group, what did you proceed to next?

A. Went to building No. 7, for general excavation.

73. Q. That is colored 7, which is not very far away?

A. Yes, sir.

74. Q. At that time, had Redmon come on the place?

A. No, sir.

75. Q. Or any representative of his?

A. No, sir.

206 76. Q. Was there any work that he might have done, beginning in January, there, in the buildings, or on the outside work?

A. Yes, sir.

77. Q. What could he have done in January?

A. He could have started any of his work outside of the buildings—the sewer lines, water lines, gas lines, or the electric lines.

78. Q. Now, I will ask you to look at this Exhibit 10, which is the original plot, with the elimination of the contours and many other things. Now, where could Redmon have worked in January?

A. He could have worked anywhere on the site.

79. Q. What could he have done?

A. He could have put in any of the electric lines, any of the sewer lines, any of the water lines, any of the gas lines.

80. Q. If he had begun in January, say by the middle of January, and had worked with reasonable diligence, taking everything into consideration, within what time could he have finished all of his outside work?

A. I would say within six months.

81. Q. That would have made it about the first of July, if he had done that?

A. Yes.

207 82. Q. And would he have interfered, at all, with the outside work covered by Mr. Blair's contract?

A. No, sir.

83. Q. Is there any difference in "approach work" and "outside work" in matters of this sort, or are they the same terms?

A. They are interchangeable.

84. Q. Now, if he had finished his outside work indicated on this plat, where outside work is indicated, could he have finished it to get out of the way of Mr. Blair—this outside or approach work?

A. I will have to ask you to repeat that question. I don't understand the question.

85. Q. I will ask it again. This is the question: Indicate on this blueprint, Exhibit 10, the portion of the work that Redmon might have done to get out of the way of the outside work of Mr. Blair before the first of July?

A. He certainly could have had all of the services which I have named, the sewer, gas, water and electric lines, which cross the roads which are noted in read, or sidewalks, completed at that time.

86. Q. On the entire hospital site?

A. Yes, sir.

87. Q. Now, if he had done that; how soon could you, representing Mr. Blair, have finished all of the outside work, including grading, even grading the sidewalks, roads, parking spaces, and so forth?

208 A. Not later than October 1st, provided after he had done the work under the roads and the sidewalks he would have continued in a logical way to do the other work we had grading to do, that is outside of the buildings.

88. Q. Well, did he interfere with the outside work of Mr. Blair?

A. Yes, sir.

89. Q. But for the interference, within what time would you have finished all of the outside work covered by Mr. Blair's contract?

A. Not later than October 1st.

90. Q. Now, then, when was his outside work finished?

A. It wasn't finished as of February 14th. I don't know when he did finish it. It wasn't finished when I left there.

91. Q. On February 14, 1935?

A. Yes, sir.

92. Q. Did he, at that time, have open trenches, or ditches, or backfilling yet to do?

A. Yes, sir.

93. Q. Did that interfere with your work clear up to that date?

A. Yes, sir.

94. Q. It was there on into the date that you finished?

A. Yes, sir.

95. Q. You would have finished October 1st, but for his interference?

A. Yes, sir.

209 96. Q. You are positive about that, based on your experience and ability to do such things?

A. Yes, sir.

97. Q. Now, in addition to that outside work on the grading, did you have other grading to do?

A. I did the general excavation for all for the buildings.

98. Q. That did not include trenches for footings?

A. No, sir.

99. Q. That was the general superintendent's lookout?

A. Yes, sir.

100. Q. So, then you say you did the general excavation for the service group, then in No. 7, and then where did you go.

A. To No. 2.

101. Q. That is the main building?

A. Yes, sir.

102. Q. And how long did it take you to get that done, approximately?

A. Around three or four weeks.

103 Q. Then you went on to what other buildings?

A. I think that—I am not positive—I went to No. 1, and then to No. 4.

104. Q. Now, during that time, was there work that could have been done outside of these buildings by Redmon which he did not do?

A. Yes, sir.

210 105. Q. What could he have done at the service group?

A. He could have put in his underground work, just as soon as I got my work out of the way--finished the general excavation.

106. Q. He could have finished the underground work?

A. Yes.

107. Q. Is that true in reference to each one of these buildings?

A. Yes, sir.

108. Q. when you speak of "underground work," what do you mean by that?

A. Drains, sanitary sewers.

109. Q. What work did he have to do in 7 or 2 or 4?

A. Well, take building No. 7—

110. Q. All right?

A. The steam line came in underground and ran in trenches; his water lines ran in trenches, underground.

111. Q. That came within the walls of the building?

A. Yes, sir.

112. Q. There was a basement to 7?

A. Yes, sir.

113. Q. And excavation down to the floor, the bottom of the floor, solid, was made by you?

A. Yes, sir.

114. Q. Now, then, it was up to him to put in his trenches for the steam pipes and the sanitary sewage, and other things,
211 just immediately after you got through?

A. Yes, sir.

115. Q. Was there much of that to be done?

A. Well, not compared to his whole contract.

116. Q. I know, but was there a considerable amount to be done in this basement?

A. Yes.

117. Q. Now, after you had excavated to the base or bottom line of your basement, would it be proper to get Blair to proceed any further with the work until these things were put in?

A. Yes, sir.

118. Q. What could he do?

A. He could put in his footings or foundations.

119. Q. Around in that space?

A. Yes, sir. And the interior footings.

120. Q. And the interior footings, you mean by that?

A. The column footings; they are inside the building.

121. Q. Did he do that?

A. Yes, sir.

122. Q. In your opinion, did Mr. Blair's forces proceed diligently with all the work that could have been done, in an orderly manner?

A. Yes, sir.

123. Q. And, on the schedule he had, under the progress he was making, could he, and would he have finished his work by November 1st?

212 A. Yes, sir.

124. Q. But for the interferences?

A. Yes, sir.

125. Q. Now, have you given this matter thorough study, in making your answers?

A. Yes, sir.

126. Q. You had the plans and specifications and everything before you, and ample opportunity to study them?

A. Yes, sir.

127. Q. Now, as a matter of fact, do you know when Redmon first began to do any of that work under the buildings, under the basements, the slabs?

A. Not positively. Not positive knowledge.

128. Q. Did Redmon have any foreman on the job in January?

A. No, sir.

129. Q. In February?

A. No, sir.

130. Q. In March?

A. They came some time in March.

131. Q. Who came? Who was that?

A. Mr. White.

132. Q. Mr. White?

A. Yes.

133. Q. Was he the superintendent on the job then?

A. Yes.

213 134. Q. Do you recall that he came there March 19th, or about that time?

A. Somewhere around the middle of March.

135. Q. All right. When he came there, did Redmon have any workmen, foremen, material, equipment, machinery, or anything on the job?

A. He didn't have any machinery.

136. Q. Did he have any workmen?

A. He had no foreman until Mr. White came.

137. Q. Do you recall whether he had any workmen?

A. I don't know.

138. Q. You don't know?

A. He didn't have any for my work there.

139. Q. None for your work?

A. No, sir.

140. Q. You couldn't get to your work?

A. No.

141. Q. Now, you say, he should have begun, or could have begun, in January. What equipment should he have had in order to carry on that work in an orderly way, as expeditiously as it might be?

A. He should have had, at least, two ditching machines, air compressors, picks, shovels, tampers, and caulking tools, back-filler.

142. Q. You speak of ditching machines; you mean machines to dig trenches?

A. Yes, sir.

214 143. Q. Now, how long, and how deep, and how big were those trenches that you had to go across where your outside work was to be done?

A. Well, I would say that the average width of those trenches would be around thirty-six inches, and varied in depth from three feet to ten or twelve feet.

144. Q. Were there any places where you had to make cuts or fills where these trenches would cross?

A. Yes, sir.

145. Q. Could you make the fills before he did his work?

A. I could have made some of them, but it would have interfered with his work, due to the fact that it would have been necessary to build piles through that section to hold the loose dirt.

146. Q. Then it was to his benefit that you did not proceed to that, to the filling in of your places, where he had to put his trenches?

A. That is correct.

147. Q. And it was to his advantage?

A. That is right.

148. Q. Now, where there were cuts, what did you do about it?

A. I went to him and told him if he would tell me where he would like to start; I would remove the excavation, which in some cases was as much as eight feet, so that he would not have to cut through the additional eight feet.

215 149. Q. Who did you tell that to?

A. Mr. White.

150. Q. What was the result?

A. He says "We will get around to that later."

151. Q. Did he ever get to it?

A. No, sir.

152. Q. As a matter of fact, Mr. Lacey, did Redmond ever finish his contract?

A. No, sir.

153. Q. What did he do? Did he abandon it?

A. I presume he did. He left the job. What I mean is, they brought another company in there.

154. Q. He left the job?

A. Yes.

155. Q. Up to that time, had he done anything on the outside work to get out of your way? That is, to get out of your way for Blair's outside work?

A. Not one thing.

156. Q. He had no men, equipment or anything else for the purpose of doing that work?

A. No, sir.

157. Q. In fact, this work, which he had to do, in the sanitary work, and so forth, up to the time he left there—I think Mr. White came there, we will say March 19th, and Redmon left the contract June 26th, practically three months—what was done on the Redmon contract in that interval?

216 A. Not any considerable amount. A very small amount was done on the buildings.

158. Q. Well, was any done anywhere else?

A. No, sir.

159. Q. During all that time, now, that is, prior to his leaving the job, do you know, approximately, how many men he had there under Mr. White, for the purpose of carrying on that work?

A. I would say that he never had over six men.

160. Q. Have you had enough experience to know how many men he reasonably should have had, and what equipment he should have had?

A. Yes, sir; if he had been doing the proper work, he should have had around seventy-five men, for the approach work and the buildings.

161. Q. Well, as against the six that he had, none of whom were engaged in the outside work?

A. Nobody was working outside.

162. Q. Now, inside, would you say he should have had a certain number of plumbers?

A. Yes, sir.

163. Q. And a certain number of electricians?

A. Yes, sir.

164. Q. Pipe fitters, and so forth?

A. Yes, sir.

165. Q. And he just practically, as you recall, he had six men?

A. Yes, sir.

217 166. Q. Now, did he have any equipment, other than a small pipe-fitting outfit?

A. No, sir.

167. Q. To work with?

A. No, sir.

168. Q. Do you remember whether Redmon ever came there between the first of January and the time Mr. White came?

A. I am certain he came there once.

169. Q. How long did he stay?

A. Several days.

170. Q. Did he talk with you?

A. Yes, sir.

171. Q. Did you tell him about the difficulties under which Mr. Blair was working on account of his failure to perform?

A. Yes, sir.

172. Q. What did you tell him?

A. I told him that he was seriously interfering with our work, that is, our working on the approach work.

173. Q. What was his response?

A. I don't know.

174. Q. You don't know what he responded?

A. No.

175. Q. What did he do.

A. Nothing.

176. Q. So he did not get out of your way?

A. No, sir.

218 177. Q. All right. Now, in addition to the pipes which he should have laid in the basements in that number of buildings that you first mentioned, about how many of these buildings had basements where had to put these pipes underground, before the basement slabs could be poured?

A. Number 12, 4, 6, 7, number 14, number 16, number 17, number 19, and number 18.

178. Q. Well, that was about all of them?

A. That got most of them.

179. Q. Most of them?

A. I think Building Number 15 did not have a basement of any account.

180. Q. Fifteen was the storehouse?

A. Yes, sir.

181. Q. Sixteen was the garage?

A. Yes, sir.

182. Q. Fourteen was the laundry?

A. Yes, sir; with some apartments upstairs. Sixteen did not have a basement, unless you count the floor a basement?

183. Q. No; I mean down below, six or eight feet?

A. No; didn't have a basement.

184. Q. Thirteen?

A. A small basement.

185. Q. That's the engine house?

A. Yes, sir; that has a basement to be used—

219 186. Q. In connection with the boilers and machinery?

A. Yes, sir.

187. Q. Did Mr. Blair's forces interfere with the progress of Redmon's work at any time prior to the time when he gave up that work and left the job?

A. No, sir.

188. Q. Did Redmon interfere with Blair's forces?

A. Yes, sir.

189. Q. Up to that time?

A. Yes, sir.

190. Q. He did?

A. Yes.

220 By Mr. BALL:

191. Q. Now, after Redmon left the site, and abandoned the work, we will say, and between that time and when the Virginia Engineering Company undertook to perform, was anything substantial done by Redmon?

A. No, sir.

192. Q. Do you recall about when the Virginia Engineering Company got its contract with the Maryland Casualty Company to carry on Redmon's work?

A. About the middle of July.

193. Q. Then how long was it after that before the Virginia Engineering Company had any substantial number of men, equipment and material to carry on that job?

A. They had men and equipment for the inside work within ten days or two weeks, and for the outside work it was approximately thirty days.

194. Q. That would bring it down to something like July 26th?

A. Something like that; yes, sir.

195. Q. Well, would you say by that time that the Virginia Engineering Company got under pretty good headway?

A. Yes, sir.

196. Q. And, from that time on, what was the progress of their work?

A. They did all that could be expected of them.

197. Q. Would you say they were or were not delayed by the condition in which Redmon left his work?

A. They were delayed.

198. Q. What did that entail upon the Virginia Engineering Company before it would start?

A. Well, there were certain pipe lines in there and conduits which they didn't know anything about; they didn't know where they were; they had to find a lot of them.

199. Q. You mean they had been covered up?

A. Covered up. They didn't know what was in place, and what was not in place.

200. Q. You mean, some small part of the work had been done and covered up?

A. A small part of it.

201. Q. Which they had to investigate, to locate, in order to know whether he had done it or not?

A. That's right.

202. Q. That is what you mean to say?

A. Yes, sir.

203. Q. I asked whether any considerable part of it had been done, and you said no. I don't know just what a considerable part is, but that was your answer. Now, what percentage of the Redmon work would you say had been done prior to the time, or up to the middle of July, or later, when the Virginia Engineering Company took over the work and started with a good stride on this job?

A. I would say that not over five percent.

204. Q. That wasn't finished?

222 A. Yes.

205. Q. So that is ninety-five percent of this work had to be done after July 25th?

A. Yes, sir.

206. Q. And they finished it up, you said, I believe, they finished it up about February 24th, 1935?

A. I don't know whether they ever finished it or not.

By the COMMISSIONER:

207. Q. February 14th.

A. They hadn't finished it on February 14th, there were still open ditches.

By Mr. BALL:

208. Q. Well, then, the Virginia Engineering Company did perform all of the work with the exception of the five percent, or ninety-five percent of Redmon's work, between July 25th and February 14, 1935?

A. Yes, sir.

209. Q. Now, I want you to do this, can you tell us approximately the number of men the Virginia Engineering Company put on that job, and what equipment?

A. I don't know how many men they put on in the buildings. On the approach work they put an air compressor, and they put a backfiller, they put two ditching machines.

210. Q. That was for the purpose of digging these trenches there across part of the reservation which you had to grade?

211. Q. And in which you had to build these roads and side-walks?

A. Yes, sir.

212. Q. And parking places, and so forth?

223. A. Yes, sir.

213. Q. And that you could not build until they had that done?

A. Yes.

214. Q. About what time did they begin working on this outside work, the whole of it?

A. Sometime in August.

215. Q. And, with the exception of backfilling some of these trenches, they had that done February 14th?

A. Substantially completed its work.

By the COMMISSIONER:

216. Q. About how many men did they have on the outside work, when they got it going good?

A. I would say, Judge, between forty and fifty. He had ample outside forces after he once got started.

By Mr. BALL:

217. Q. Now, in order to carry on your outside work, how many men, and what equipment, did you have to have, besides Mr. Mylam, who was working the roads and pavements?

A. You mean, to do all the outside work?

218. Q. Yes.

A. We had a gasoline shovel, had a steam roller, gasoline tractor, road machine, and various small tools.

219. Q. Even then, were you able to carry on without interference, or interference by Redmon or the Virginia Engineering Company?

A. You mean up to the—

220. Q. No; after you did get started in?

A. No. I couldn't carry my work on in the order in which it should have been carried on.

224. 221. Q. Why not?

A. Too much interference.

222. Q. What sort of interference?

A. Ditches were open and which hadn't been—in which they hadn't put the pipe in. There were places where they had not cut the ditches.

223. Q. Now, did you notify Mr. White, while he was there, and the Virginia Engineering Company representative thereafter, that you were ready to do certain work, and they were in the way?

A. Yes, sir.

224. Q. Did Mr. White continue there on the job?

A. He stayed there some time, I don't know how long.

225. Q. Do you remember who took charge after he left?

A. No, sir.

226. Q. Was it a Mr. Updike?

A. You mean for the Virginia Engineering Company?

227. Q. Yes.

A. Mr. Updike was the superintendent for the Virginia Engineering Company.

228. Q. He had charge of the Redmond work, all the installation inside and outside?

A. Yes, sir.

229. Q. Did you inform him of the situation with reference to the delay caused you?

A. Yes, sir.

230. Q. On this outside work?

A. Several times.

225 231 Q. Several times?

A. Numerous times.

232 Q. State whether or not you ever called his attention to the fact that cold weather was approaching, and that it would be so expensive then to do your work?

A. Yes, sir.

233 Q. In cold weather?

A. Yes, sir.

234 Q. What was the effect, if any?

A. No effect; he promised to get out of our way as quick as he could.

235 Q. I believe you said they did operate as diligently as they could, under the circumstances?

A. Yes, sir.

236 Q. Well, now, when did the cold weather start in, or begin?

A. In November.

237 Q. November, what year?

A. 1934.

238 Q. November 1st?

A. Right around the first.

239 Q. Now, when the cold weather did start, what effect did it have upon your outside work?

A. It slowed it up considerable.

240 Q. In what way?

A. Quite a number of days the temperature was below freezing, until as late as eight or ten o'clock in the morning. We weren't allowed to pour any concrete until the thermometer got above 32, and we were required to stop when it came
226 back down to 32, which meant, sometimes, that we could only work three or four hours. It also made us quite a lot of trouble, we had to build fires along the sidewalk, and we had to put antifreeze in the concrete mixer. It also made us, we had to keep concrete finishers there on the sidewalks and roads sometimes as late as one and two o'clock at night waiting for the concrete to set sufficiently to finish.

241. Q. You could not left it to morning?

A. No, sir; can't use what has set-up.

242. Q. If it had been rigid?

A. We would have been required to remove it.

243. Q. That would have been a loss?

A. Yes, sir.

244. Q. In what other ways did that cold weather affect your part of the work?

A. Well, it was so cold that we had to use a steam roller to heat the asphalt, when we would dump it. It was getting so cold, on the top, we had to go over it, impossible to dump it and spread it, therefore, without requiring heat.

245. Q. Was that asphalt furnished from a central plant?

A. Yes, sir.

246. Q. How far was that, approximately, from the place of spreading it?

A. About seven miles.

247. Q. Seven miles? Where was it?

A. Roanoke.

248. Q. Roanoke?

227 A. On this side of Roanoke.

249. Q. That left Roanoke when it was hot, and when it got to the place it was to be dumped, you say it was cold, and you had to heat it before they could dump it?

A. Yes, sir.

250. Q. How did you manage that?

A. We had a steam roller that went along behind, and had some hose from his boiler, steam hose connected to a perforated piece of steel pipe, and would stick the piece of steel pipe up into the center of the asphalt, and turn that steam on and heat it.

251. Q. Well, it would flow?

A. It was a mixture of asphalt and rock. It didn't flow at all, it kept it hot so it would roll out of the truck and could be spread.

252. Q. Those were dump trucks?

A. Yes, sir.

253. Q. And when it got out there, it was warm enough so you could spread it?

A. If we worked right fast, it was.

254. Q. You used a spreading machine?

A. We had a spreading machine.

255. Q. So that you spread it sort of quickly?

A. We spread it quickly; but during the cold weather it didn't spread it entirely satisfactory; we had to go back and carry shovelfuls and pack it in the spaces where the asphalt had not been spread evenly.

256. Q. When that was done, did you have to use heated instruments to get it smooth, and get a smooth area on it?

A. Yes, sir.

257. Q. Was that the nature of the work?

A. Yes, sir.

258. Q. Would that have been necessary but for that cold weather?

A. No, sir.

259. Q. Did you have considerable expense in this way?

A. Yes, sir.

260. Q. Which you would not have incurred if you had finished before the cold weather?

A. Yes, sir.

261. Q. Now, what was your experience with your boilers on your roller, on account of this cold weather?

A. We had to drain the roller during all of the cold weather and refill it the next morning.

262. Q. How about the other machines?

A. We had to do the same thing.

263. Q. You had to empty your boilers?

A. Or anything else, to put it away at night.

264. Q. To prevent it from freezing up or possibly damaging the machine?

A. Yes, sir.

265. Q. Then, the next morning, did you have any difficulty in refilling them?

A. Yes, sir.

266. Q. How?

A. Some times the water lines were frozen and it took a long time to thaw them out.

229 267. Q. In the meantime, what would the force be doing?
A. Nothing.

268. Q. Of course, your equipment was idle, and your man force could not work?

A. True.

By the COMMISSIONER:

269. Q. What is the maximum number you had on the outside work, any time, there?

A. I don't remember, but I would say between fifty and sixty, about.

By Mr. BAIL:

270. Q. Now, do you know anything about—well, is there anything else that was caused by the cold weather?

A. Yes, sir.

271. Q. In connection with your work?

A. Yes, sir. We used a caterpillar tractor, and it froze to the ground, on one occasion, and we tried to break it loose, and made a failure, the track broke, and, after that, we had to build fires along by the said of the track to keep it from freezing.

272. Q. When you say "track" you mean the caterpillar track?

A. Yes, sir.

273. Q. That is what you call the track?

A. Yes, sir. That hasn't happened very frequently, but quite a number of times.

274. Q. How about your steam shovel, did that freeze up, too?

A. Yes, sir; it had the same kind of a track on it that the caterpillar tractor had.

275. Q. Is there anything else as the result of the cold weather after November 1st up to the time you finished?

230 A. The top soil, which we had stored away, after we had done our fine grading, it froze on us, any number of times, and when we attempted to come and grade, it was froze in big pieces, which we couldn't handle in a mechanical way.

276. Q. What would be the effect of that on your labor, compared with what it would have been in warmer weather? Would it interfere with it?

A. Yes, sir; very much.

277. Q. Now, about the question of your grading, and the handling of the dirt, generally?

A. I would say that in handling the dirt which was frozen, like that dirt was, we were getting only about fifty percent of a normal day's work. On concrete work, we weren't able to do over thirty or forty percent of a normal day's work.

278. Q. When you speak of a "normal" day's work, you are talking about the work that should have been done prior to November 1st, in good weather?

A. Yes, sir.

279. Q. Now, is there anything else that interfered, outside of what Redmon had failed to do, or his successors, that interfered with your outside work?

A. No, sir.

280. Q. In connection with the delays in the boiler building, No. 13?

A. No, sir.

281. Q. Now, on this blue print No. 10, you find roadways are marked in red, and across there at frequent intervals are
231 white lines. What do those white lines indicate, and what part did that play in your work?

A. They indicate some type of service, electric cables, or storm sewers, sanitary sewers, water lines, or gas lines.

By the COMMISSIONER:

282. Q. Something Redmond had to put in?

A. Yes, sir. Something that has been referred to first outside services.

By Mr. BALL:

283. Q. His failure to do that had what effect upon your work?

A. If I attempted that, in the majority of places I had to pave, I couldn't pave until those were put in.

284. Q. Could you put in curbs?

A. I could have put curbs in, in some places; unless the lines run too close to it, I could.

285. Q. Then he could tunnel under, as far as the curb was concerned?

A. Yes, sir.

286. Q. But, was that true where you had a roadway or a sidewalk?

A. There was a few isolated instances in which we could put curbing in, but there was danger of the curbing falling into it.

287. Q. Did you keep right square up with all your opportunities to do the outside work?

A. Yes, sir.

288. Q. So as not to interfere with Redmon?

A. Yes, sir.

289. Q. I may not have asked you, and I will interrupt
232 long enough to ask you now, whether you had much outside work at the Northport project for Mr. Blair?

A. Yes, sir.

290. Q. How large a project was that?

A. His original contract price on that was \$2719000.00.

Mr. WATSON. Object to that as being immaterial.

Mr. BALL. Well, it is not, in a way; I didn't mean that way.

A. About twice the size of this job.

291. Q. What I really want to ask you, Mr. Lacey, is this: Did you have charge of the approach work there?

A. Yes, sir.

292. Q. How much was there of that compared with the approach work here?

A. Approximately twice the amount we had at Roanoke.

293. Q. That Roanoke job was finished in about fourteen months?

A. The Northport job, you mean?

294. Q. Northport job, I mean; that was finished in about fourteen months?

A. Yes, sir.

295. Q. Was your work square up, even with schedule time?

A. Yes, sir.

Mr. WATSON. I object to it as immaterial and having no bearing on this present case.

The COMMISSIONER. Nothing further than to show the normal time for a similar group doing work at that speed. I don't think it is prejudicial, at all. Objection is overruled; exception noted.

Mr. WATSON. Note the exception.

293 302. Q. Was the Virginia Engineering Company in charge of the outside work of the mechanical equipment work at the Northport job?

A. They had the plumbing and heating, they did not have the electrical work.

303. Q. What sort of progress did they make in comparison with the Balir work, there?

A. They kept right up with us at all times.

304. Q. Did the others having the other kinds of mechanical equipment do the same thing?

A. Yes, sir.

305. Q. So you were not interfered with there, at all?

A. Not at all.

Mr. WATSON. At this point, if the Commissioner please, I am going to enter an objection to this testimony, all this testimony given by this witness, with reference to the Virginia Engineering Company, and the Redmon Heating Company as being immaterial, if it is compared to this particular contract; that is a separate independent contractor, and a separate independent contract that the Government had with the Redmon Heating Company.

The COMMISSIONER. You are objecting and moving to strike so much of his testimony giving the time of the Virginia Engineering Company in the execution of the New York contract. I think it should be sustained as to that.

By Mr. BALL:

306. Q. Mr. Lacey, look at that Exhibit 24, and if you can, explain to us the difference in the cost per cubic yard, as shown in the statement, where, in July you get as much as 45¢ against half of that in other months?

A. On an excavating job like that, one of the large items of cost is rental of equipment. If you rent equipment, which was the case here. Another one of the large items is the overhead, which you must figure in the job, whether you are working or not. In the month of July, we moved only 7,150 cubic yards, and the cost of that was 45¢ per yard.

By the COMMISSIONER:

307. Q. Because of these overhead costs?

A. Yes.

By Mr. BALL:

308. Q. So there is no error in that?

A. No, sir.

309. Q. The percentage drops again, and rises again—

A. In the month of August, we had a cost of 22¢ per yard; at that time, we moved over 9,000 yards, and for September we had 10,000 that cost 31¢ per yard. Along toward the latter part of the job, after October—September, we began to move some top soil, and worked some few areas where there was a very little coating, which ran the cost up.

310. Q. Now, is that table based upon your knowledge of what took place?

A. Based upon the actual cross sections, taken at the job, each month.

313. Q. Would you care to go back to June and some of the other months?

The COMMISSIONER. It illustrates the same principle.

By Mr. BALL:

314. Q. That is abnormal?

A. In the month of April, we moved 21,000 yards. In other words, after we organized our forces, and had our work lined up, you see that we should have moved around 20,000 yards per month. These months costs us from 20¢ to 24¢ per yard. From July on we ran into Redmon's work, and we could never maintain the schedule which we had set.

315. Q. That takes into consideration the effect of the cold weather, after November 1st?

A. After November, the weather was cold.

Cross-examination by Mr. WATSON:

322. Q. Mr. Lacey, were you general superintendent on this Roanoke job?

A. No, sir.

323. Q. What was your title?

A. My title was field engineer.

324. Q. How were you paid?

A. By the month.

325. Q. Would you mind telling us what your salary was?

A. Two hundred dollars a month.

326. Q. Any bonus of any kind?

A. No, sir.

327. Q. Any extra salary to complete the job in any certain time?

A. No, sir.

328. Q. Now, when the Virginia Engineering Company took over the work, Mr. Updike, I believe, was their foreman?

A. He was their superintendent.

329. Q. Did you go to coordinating your work with his work?

A. Just as far as possible to do so.

236 330. Q. How soon after that they took it over did you coordinate this work?

A. I started with them on the first day he came there and tried to work out a system which would enable both of us to keep going.

331. Q. How long did it take you to finally arrange yourselves in order to work together?

A. We never did get it arranged.

332. Q. In other words, you were always running behind?

A. Always.

333. Q. Did they ever catch up with you at any time?

A. No, sir.

(Witness excused.)

PLAINTIFF'S WITNESS JUDSON EMMET MILAM

DIRECT EXAMINATION BY MR. BALL

By the COMMISSIONER:

1. Q. You will state your full name?

A. Judson Emmet Milam.

2. Q. How old are you?

A. Thirty-seven.

3. Q. You live where?

A. Atlanta, Georgia.

4. Q. Your occupation is what?

A. I am in the construction business.

5. Q. Have you any financial interest, either directly or indirectly, in the outcome of this lawsuit?

A. No, sir.

By Mr. BALL:

6. Q. What education have you had in this line of business in which you were engaged with Mr. Blair on the Roanoke job?
237-238 A. Well, the school of experience, since I was about ten years old, up until I went to work there.

7. Q. Some twenty-six years experience, you mean, Mr. Milam?

A. Yes, sir.

8. Q. In what sort of experience—what have you been doing?

A. I started off roads, steam shovels, all that kind of thing, on up to superintendent, doing part of the work, finisher; and all.

9. Q. When did you go into the employ of Mr. Blair?

A. Well, I did a little bit of work for him in 1933.

10. Q. In 1933?

A. Yes, sir; just a little.

11. Q. Well, this contract on the Roanoke job was made in December, and they began work in January 1934?

A. Yes, sir; that's right, I went up there, if I remember right, I got there around the 4th of January.

12. Q. Had you ever been employed by Mr. Blair before that time?

A. Yes, sir.

13. Q. On what jobs?

A. Grading up the airport, at Maxwell Field, out here.

14. Q. Did you have much grading at Maxwell Field?

A. Yes, sir.

15. Q. How long did that take you?

A. Eight months.

16. Q. Now, you say you went to Roanoke about January 4, 1934?

A. Yes.

17. Q. In what capacity, and to do what?

A. Superintendent outside work, paving and grading.

18. Q. Did you work with Mr. Lacey?

A. Yes, sir.

19. Q. You heard Mr. Lacey's testimony about the experience there—his experience there—take the outside work that
239 Mr. Blair was under contract to do, have you had ex-

perience enough to enable you to make and form a judgment as to how long it would have taken him to do the outside work, if he had not been interfered with in any way?

A. I think so.

20. Q. Well, within what time could he have done it?

A. He could have finished—I told Mr. Blair before I left to go up there, I told Mr. Blair I could finish in the month of September.

21. Q. Well, you do say, then, that he could have finished in the month of September? Is that your answer?

A. Yes, sir.

22. Q. He didn't finish in September?

A. No, sir.

23. Q. When did he really get started on the outside work?

A. I think about the first dirt that I loaded out up there was on the 14th of January 1934.

24. Q. Now, what part of the reservation was that on, and what was it for?

A. It was for the—I started in on the laundry—I forget the name of the buildings.

25. Q. That is the service buildings?

A. Service buildings. I started on the laundry.

26. Q. You didn't go into the general grading on the whole reservation?

A. No, sir.

240 27. Q. But you did this grading for the purpose of preparing for the erection of this service group?

A. That's right.

28. Q. After you had finished this service group, what did you continue to do? Did you continue with the other buildings?

A. Well, when we got through, I asked for the man that was to do the outside work. They told me he wasn't there.

29. Q. You mean the outside work, for heating, and so forth?

A. The outside—sewers and distribution system. I wanted to work the schedule with him, so I would know how to begin my work. I was lost all the time, because I could never work out anything. I wanted to work out one where I could grade up to the first basement, or building sites, and, while I was doing that, I wanted to ask the man, well, see the man who had the sewers, and the outside electrical work and steam lines; I wanted him to be up with the other area, so that when I started in I wouldn't be in his way, but I couldn't find anybody to do that work.

30. Q. Nobody there representing the Redmon equipment man, is that right?

A. That's right.

31. Q. Well, how long was it before you did find somebody to talk with about it?

A. Well, it must have been a month and a half or two months, approximately.

241 32. Q. Then, in the meantime, you were doing the excavations necessary for the building sites?

A. For the building sites; yes.

33. Q. Did you come behind and do any work on what is called the approach work?

A. That's right.

34. Q. And your reason for that was what?

A. Well, the reason for that is, on work of this type you would always do your buildings, first, then your sewers, and steam lines, and electric lines would be put in ahead of you, so that when you get through with your buildings you could drop back in there, and not be in each other's way, but I couldn't get any one to do that, there was no one there to do it. That was my reason for doing that.

35. Q. Was it improper, or impossible, for you to go on with your work before the Redmon people, or somebody else, did the outside work?

A. It wasn't impossible to do so. It was more expensive.

36. Q. It wasn't practicable?

A. It wasn't practicable.

37. Q. Would it have been to his advantage for you to do that?

A. It would have been to his advantage to start with me.

242 38. Q. If he had started promptly in January, how soon could he have finished this outside work, the trenches, and so forth, that did interfere with the Blair work?

A. With the right outfit put on there, he should have finished in not over four months.

39. Q. You say, then, he could have finished not later than the first of June?

A. That's right.

40. Q. Well, now, did the superintendent of Redmon come there after the middle of March, and were you able to work out a plan of cooperation with him, in regard to any of this work, and, if so, what?

A. I asked Mr. Lacey to go and work out some plan with him, and told him what I wanted, how I wanted to do this work, and Mr. Lacey didn't get this plan worked-out with him; he kept putting him off or something, and, finally, one day I met him on the property, and I asked him to get these sewers in, so that the ditches could settle, and so that we could work along together; that the ditches weren't put in at that time, I told him if they weren't put

in at the earliest date on the job, I could not begin laying the pavement, and that if the winter rain started those ditches wouldn't have their final settlement, and I would have to go back and tear the paving up and put it in over, due to the fact that they hadn't had time to take their proper shrinkage, and he told me to let him worry about getting the ditches in, and for me to do the rest of it.

41. Q. That was how long after he had come there?

A. Probably two weeks.

42. Q. That would make it some time down in April?

A. Yes, sir.

By the COMMISSIONER:

43. Q. Did he seem to worry about it?

A. No, sir.

44. Q. He told you to let him worry?

A. Yes, sir.

45. Q. But, if he did worry, you didn't know it?

A. No effect to my part of the work on it.

By Mr. BALL:

46. Q. All he did, then, was to worry about it?

A. If he worried, he didn't do any work.

47. Q. Well, during that time, did, at any time, the Redmon Heating Company have any men or equipment there to do any of the outside work?

A. During the time, from the time that I asked him, now, that is the question, to get something on the job and go to work?

48. Q. Yes?

A. No, sir.

49. Q. Did he ever have, up to the time he abandoned the contract, men, material, or equipment there to do the job?

A. No, sir.

244 50. Q. He did abandon the contract, didn't he?

A. That's right.

51. Q. That happened June 26th or 27th?

A. I don't remember what day it was.

52. Q. All right.

54. Q. Up to that time, you say he had no men or equipment to do his outside work, and that interfered with you in carrying on your work for Mr. Blair?

A. At that time, it wasn't interfering with me, up to that date, but it was going to interfere with me later, I knew, and at that time I was working on the foundations of the buildings, but it wasn't interfering with me at that particular time, but it was going to flash back at me later, because they weren't in—

55. Q. Well, now, later on, after Redmon abandoned the contract, and the Virginia Engineering Company took it over, and went to work on it—

A. That's right.

56. Q. How did they cooperate with you from that time on?

A. Well, they cooperated with me reasonably well.

57. Q. Well, were they in a position to catch up with the work which Redmon should have done prior to that time, to coordinate with you?

A. No, sir; because they were too far behind. It would have been almost impossible for anybody to get up with it.

245 58. Q. Did Redmon and the Virginia Engineering Company catch up in the Redmon work?

A. No, sir.

59. Q. Were you informed by Mr. Blair that the program was to entirely finish his contract by November 1, 1934?

A. Yes, sir.

60. Q. Were you working to that end?

A. I was working to finish in September, because I had to finish ahead of the important paving and studd, ahead of this.

61. Q. Would you have finished by that time, but for the interference, or the failure of Redmon to do his work?

A. Yes.

62. Q. Now, what part of your work were you particularly concerned about—the paving?

A. Well, I was, the principal part of the delays that I was worried about was the top soiling and paving. I was worried about that, whether I would get that done before Wintertime, before the bad weather got us. Paving and topsoiling can't be done practically in the winter months, especially up in the Blue Ridge Mountains, up there where we were in Virginia. It can't be done practically up there. And I was making every effort that I could to get this work done ahead of me before bad weather, so I could get the paving in and the grading, and the sewers, and the electric lines, steam lines, water lines; and
246 gas lines had to go in before I could finish, only in patches.

63. Q. Were you materially delayed by the failure of the Redmon work—

A. Yes, sir.

64. Q. So that you didn't finish your work until about the 14th of February 1935?

A. That's right.

65. Q. And the Redmon work wasn't finished until the same time, was it.

A. That's right.

66. Q. Explain, if you will, just exactly the effect upon your outside work of the cold weather which set in while you were there, along shortly after November 1, 1934?

A. Well, I had started—I didn't get but a very little topsoiling. The topsoil was to be put on in eight-inch applications. I had put in very little of it when cold weather started. I had put in a few little spots about between ditches, which was very expensive. I had to haul it too far, to go around the ditches to go to these little areas, and had to haul it probably twice as far, because the ditches were in my way. I could not cross the ditches, they weren't backfilled. The cold weather, when I did start topsoiling, I had to put about eight inches application, and it was
247 freezing around a foot thick, and I could not put an eight-inch piece of soil up there frozen, if it was a foot thick, I couldn't put eight inches in the layers, so I had to burst it and beat it up to get it in there, which is more than double the cost on my topsoiling for the entire project, which was all laid into big piles, and every time you had the piles, it was loose and very icy, I had to break them up.

67. Q. Do you mean to say the ground was frozen a foot deep?

A. No; not the natural ground. The natural ground would not be. But it was piled in a loose pile, and it did freeze deep in those loose piles.

68. Q. The natural ground did freeze?

A. It froze probably a foot.

69. Q. Oh, yes.

A. And putting on this topsoil, why, I was forced to put more in the light places because I couldn't get it broke up, and it cost me quite a bit of extra money to put it on under these methods. And my paving, why I put the paving down in patches, too, was because, even in December it was ditches every space, and I put down a little patch over here and one this side, I have to haul it away around to get it to them, and when I come up to a certain point, I was wondering whether these two ends would come together to meet each other, because I had just a little bit over there.

248 70. Q. You were doing some of the worrying that White said he would do?

A. That he would do—yes, sir. And then I had to cover this stuff up at night, more than I would have had to cover it up, and buy a whole lot of paper—I don't know how much I had to buy—how many lineal feet of sidewalk I had up there, right now, I don't remember.

71. Q. What was that paper you bought?

A. Paper to cover this up, to keep it from freezing. I would not have had to have bought it if I had got this work in early on the

approaches, so I could get the paving done, I wouldn't have had to have bought this paper. In addition to buying paper, I had to build fires, and I had to maintain a man to keep the fire at night out there, and paid for him. Then the cement set slower in cold weather than it does in warm, so I had to keep three or four finishers out there late in the night.

72. Q. How did you get the heat that you speak of?

A. Well, I put what was known as "salamanders;" in other words barrels, chopped holes in the bottoms of them, and that forms a draft, fill them with fire, and place them alongside the base, and then I was to put down the cold-mix asphalt pavement, and it can't be laid in the Wintertime successfully, so I was forced to heat these pavements with steam, and a lot of time, on my
249 base, I had to throw gasoline, had to heat the stone base, is what I am talking about,—I laid the stone base, and then laid the asphalt on top of the stone base.

73. Q. You mean a concrete base?

A. No. It was stone. Water-bound macadam. Stone, crushed limestone made the base.

74. Q. How thick was that?

A. Six inches. The water would get in it, and I would have to put gasoline out there, and set this base afire and dry this water off, so I could lay this cold-mixed asphalt on it.

75. Q. Those wet conditions came from the freezing, from the rain, or what?

A. From freezing—yes, sir.

76. Q. All right.

A. And this increased my cost considerably on the pavement. In a number of places, these ditches, what I had told Mr. White about in the beginning of the job, if he didn't get them in early that they wouldn't take their shrinkage, I had to go back and jack those sidewalks up in a number of places, and take them up and replace them, without any extra pay from the Government. The ditches all settled down, like I had warned him at the beginning of the job, that I had to raise up, and I would say that there was over a thousand dollars worth of that that I had to raise up and rework, altogether.

250 77. Q. Do you mean it cost a thousand dollars to do what you would not have had to do if you had not been interfered with?

A. I would not have had to have been done it if those ditches were put in in the proper time. And, getting off the record, to show you that I know what I am talking about, I just finished a job—I had the sewers instead of paving, and they made me put them in ahead of time. I just finished one in Memphis, Tennessee.

Mr. WATSON. We object about the Memphis job, move to strike that.

The COMMISSIONER. I think, in view of the fact that the witness put that in as "off the record," I will sustain the motion and strike that part out.

By Mr. BALL:

78. Q. I will ask you this, Mr. Milan, is it the usual, recognized custom, where two contractors are working together, as in the Roanoke job, for the sewers and other pipes to be laid before the paving is done?

A. It is. It is not only the usual custom, but it is necessary to be done. The ground itself forces us to wait. No one has to tell us to do it. We don't need any contract to do that.

79. Q. I know. Now, after the latter part of July, you did have the Virginia Engineering Company there?

A. Yes; I just stated that I thought all that was humanly possible for them they did.

80. Q. You laid your roads and sidewalks in the cold weather, after Redmon had flown?

A. That's right.

251 81. Q. And you tried to get the Virginia Engineering Company to do their work ahead, so you could lay your roads and sidewalks, and they didn't do it? Is that right?

A. They didn't do it, but I wouldn't say they didn't do it because—

82. Q. You are not blaming them?

A. I am not blaming them, but they didn't do it because they weren't on the job in time.

83. Q. You mean, they couldn't do it, as far as you know?

A. They couldn't do it.

84. Q. Go ahead, I was asking about your experience in this cold weather on your job?

A. Well, then, due to the fact that Redmon did not start this job—his part of the work—at the early part of the job, I caught entirely up with the Virginia Engineering Company, I believe it was in July, but we was forced to just shut down, and done practically nothing for one month.

85. Q. Well, the Virginia people did not go there until the latter part of July?

A. Well, evidently, then; it was later than that. I would not say what time, because I don't remember what time. Mr. Clarke could help me out on that; because I had to pay rent on all the equipment I had for a month, and it sitting there idle.

86. Q. You made reports of this to the office?

A. Yes; I made reports to the office.

252 87. Q. Well, do you remember that you had caught up with your work—up with the Virginia Engineering Company—and were delayed a solid month?

A. Yes, sir; because they weren't out of the way. That's right.

88. Q. Whatever the date may have been, that is your testimony?

A. That's right. That increased my cost about fifteen hundred dollars. I paid around eight hundred dollars a month rent for stuff, and then I had my overhead, I could not cut my men off, and that increased my cost from waiting on them, because they weren't out of the way. Another cause that I had for delay was that ditches were cut from one side of this project to the other. The earth that I was supposed to take off from this plate, when I went on the job, I had the plat which I had Mr. Lacey make me, a plat of this project, and which was made in this plan, very much, where they are in these fifty-foot square spaces, showing how much earth was in each one of those spaces, and I worked from one point to the closest point possible, and we carried it out in this way, every bit of this earth to the closest possible point on the job; and then all these ditches I caught in there, I had to go all the way around, and I had to go all the way around up on the north side of the project when I should have been hauling in this part, because of the ditches, I could not haul direct, but had to go around in order to get to the final place where this dirt should be deposited.

89. Q. When you say it cost you so and so, you mean to say that it cost Mr. Blair so and so?

A. Well, he was looking to me to get the work done.

253 90. Q. But it wasn't your loss?

A. No.

91. Q. It was his.

A. Yes.

By the COMMISSIONER:

92. Q. What he wants to know, you are not claiming judgment against the defendant for these things?

A. No, no. I just thought everything belonged to me because I was working there—see?

By Mr. BALL:

93. Q. Just go ahead, if there was anything else that affected you there, bad weather, delay on the part of Redmon's work. How about your steam shovels and things of that sort, being frozen up? You heard Mr. Lacey testify about them in this case?

A. Yes, sir; that was correct.

94. Q. If there is no objection, I will ask him, in short, if your testimony would be those statements in regard to that?

A. That's right, they were frozen to the ground.

Mr. WATSON. We object to what Mr. Lacey had to say.

Mr. BAILL. Then we withdraw it.

95. Q. Go ahead with your testimony in regard to those cold weather effects, the cold weather causing you loss, or Mr. Blair loss.

A. We had mostly gasoline equipment on the project. Gasoline equipment is hard to start in cold weather, below 20, and we had lots of weather below 20; sometimes, we would be two or three hours cranking this equipment, getting it running in the morning.

Of course, I was forced to drain this equipment, too, at
254 night, to keep it from freezing and bursting, and I had a hard time getting the water the next time to put in, and sometimes it froze after I put it in, working in winter weather. And all this could have been avoided if I could have got through the job in the summer months, as the schedule was supposed to do.

96. Q. What effect did it have on the efficiency of your workmen in this line of work, this cold weather?

A. Well, it took it down, I would say, fifty percent.

97. Q. It was more expensive to do excavating in cold weather, outside of the cost of labor, than it would have been in warm weather?

A. Well, excavation, just doing general excavation, it would not increase the cost but very little in cold weather; but the topsoil up there, now, and excavation as to this particular project, say anywhere from one foot to ten or twelve foot cuts, and it didn't interfere with me so bad, the excavation, only to put the topsoil down in thin layers. It did interfere, and increased the cost of the job fifty percent, on the top soil.

98. Q. Where did you get your topsoil?

A. I got it, most of it, off the project. I piled it up in large piles, and then brung it back to where it should go.

99. Q. I see. I didn't know if you had to go buy topsoil somewhere else and delayed you any?

A. I did have to go off the project, but I would not have had to, but I had to fill in a part of the project more than the contract called for, because I could never get the stuff beat up into small enough lumps.

255 100. Q. You are no longer an employee of Mr. Blair—you testified that?

A. I am no longer employed by him.

• Cross-Examination by Mr. WATSON:

102. Q. During the time you were employed by Mr. Blair, you were on a salary?

A. Yes, sir.

103. Q. What was your salary, Mr. Milam?

A. Two hundred dollars a month.

104. Q. Now, tell us who interfered with the Blair contract in carrying out your part of the work?

A. Who interfered?

105. Q. Yes, sir.

A. Well, the Virginia Engineering Company actually did the interfering.

106. Q. The Redmon Heating Company did not interfere with any of your part of it?

A. They didn't start—they were the cause of all the interference.

107. Q. But they didn't actually interfere with you? You didn't know the Redmon Heating Company when you went on the job?

A. I didn't know them before I got on the job. I knew them when I got on the project.

108. Q. Were they on the job when you got there?

A. They weren't on it when I first got there—they went and left.

109. Q. The Virginia Engineering Company was there when you reached the job?

256 A. No.

110. Q. Who was there?

A. There wasn't no one there with them, with the plumbing contractor.

By the COMMISSIONER:

111. Q. When this work started?

A. Yes; I was there, and started.

112. Q. You were there?

A. I was the first one that did any work on the outside service.

By Mr. WATSON:

113. Q. Then you left the job and came back there?

A. No.

114. Q. Did you see the Redmon outfit there at any time?

A. I saw Mr. White. I didn't see Mr. Redmon.

115. Q. And you testify that you and Mr. White did a lot of worrying?

A. I asked Mr. White to go ahead, and get this work out of my way. And he said to let him worry about it, and not me.

By the COMMISSIONER:

116. Q. You invited Mr. White to join in the worrying?

A. Do it—not me.

By Mr. WATSON:

117. Q. You testified that you worked along with the Virginia Engineering Company at a reasonable rate? Is that true?

A. I said—wait a minute, now. I didn't testify that we worked at a reasonable rate. I said that they moved at a reasonable rate, after they got there.

118. Q. Did they coordinate their work with your work?

A. To the best of their ability, but they were there too late to get going.

257 119. Q. In other words you were ahead?

A. I was ahead of them all the time.

120. Q. Now, the months of December, January, February, and March, you say were winter months around Roanoke, Virginia, are they not?

A. That's right.

121. Q. What time did you get on the job, what date?

A. About the 4th of January, the 4th or 5th, something like that 3d or 4th.

122. Q. Why didn't you get down there sooner?

A. I don't know—still, that was about as soon after the contract was awarded as you can get one started.

123. Q. The contract was awarded December 2d, or signed December 2d, wasn't it?

The COMMISSIONER. Notice to proceed December 21st.

Mr. BALL. Dated the 19th, received the 21st.

By Mr. WATSON:

124. Q. You were right there in January?

A. That's right.

125. Q. You knew that the ground would be frozen during that time of the year, to do excavating work?

A. Yes, sir.

126. Still you went down there to perform, or attempt to perform this excavation?

A. I testified that you could do general excavation under freezing conditions, but you couldn't do topsoil.

127. Q. Now, as a matter of fact, don't you think that this part of your testimony should not apply to Mr. Blair?

A. No, sir; it is facts.

258 128. Q. Did the inspectors, Mr. Dodd and Captain Feltham, delay you in any way?

A. Well, they delayed me along at the latter part of the job, some.

129. Q. How did they delay you?

A. They caused me to build some temporary roads that I thought I should not build.

130. Q. That didn't delay you during those cold months that you mention, December, January, and February?

A. No; they weren't bothering me at that time.

131. Q. They were there on the job, though?

A. Yes, sir.

(Witness excused.)

PLAINTIFF'S WITNESS, LeROY W. KRANERT

DIRECT EXAMINATION BY MR. BALL

By the COMMISSIONER:

1. Q. State your full name?

A. LeRoy W. Kranert.

2. How old are you?

A. Thirty-nine.

3. You reside where?

A. Montgomery, Alabama.

4. Your occupation is—

A. Architectural draftsman.

By Mr. BALL:

5. Q. Have you any financial interest in the outcome of this lawsuit?

A. No, sir.

259 6. Q. Mr. Kranert, what experience have you had in the business you have been doing in connection with Mr. Blair for the last few years?

A. I am a graduate of college.

The COMMISSIONER. What college?

A. The Chicago Technical College. That was in 1918. And I was employed with a millworking concern, getting out full-sized details of buildings and materials. This mill was at that time the Carr, Bell Company, of Des Moines, Iowa. I worked for them several years, about three, possibly, or maybe four, and then I opened an office and practiced architecture, and I practiced architecture for six years in Des Moines.

9. Q. All right, what else?

A. After that I was employed as an architectural draftsman by a firm of architecture by the name of Proudfoot, Bird & Rawson.

11. Q. All right, go ahead?

A. Following that I was employed for a short duration of time, say a month or six weeks in Indiana, The Wright-Pow at

Cut Stone Company, of Des Moines, Iowa, and the millwork experience with the firm which is now Carr Company, which at that time was Carr-Yeung, and two other firms of architects, one B. Alex Lynn, and John Normile.

12. Q. I think that is enough unless the Commissioner wants more.

A. Shortly after that I was employed by a firm of contractors, similar to Mr. Blair, in getting out shop drawings, checking details, and doing estimating. His name was Fred Waites, 260 and from there I came down to Mr. Blair.

13. Q. When?

A. When? Sometime between 1931 and 1932, when they started building this postoffice.

By Mr. BALL:

90. Q. Now, after you get done with this stone business, you remained on the job in what capacity? What were you doing there on the Roanoke job?

A. Going about trying to coordinate the various types of work, to see that the various items as they came on the job would fit in place.

91. Q. Did you do any drafting?

A. Oh, yes.

92. Q. What was your connection with Mr. Roberts, the general superintendent? Well, you worked under him?

A. Under him.

97. Q. I will ask you if you had anything to do with the brick bonding on these various buildings?

A. I laid out the brick bonding on various of the buildings.

98. Q. For fear some one may not understand just what brick bonding is, and I am not guilty, myself, will you explain just what brick bonding is?

A. Bricks come in a uniform size.

99. Q. Are they—

A. Generally.

100. Q. Accurately sized?

A. Not necessarily that. What I mean is, there is a standard unit, or there is a unit high, two units wide, and four units long.

261 101. Q. Yes?

A. And, in laying brick, there are very many different textures or designs in which the periodic recurrence of the long, or the medium, or the short face is to the front.

102. Q. What do you mean by the "long"? What is that? What is the——

A. The long is called the "stretcher."

103. Q. That is about eight inches?

A. Yes, sir.

104. Q. What is the other one, or ones, called?

A. The "header," and intermediate.

105. Q. What is the intermediate? That is one on me?

A. Well, it depends on which side the brick is laying. If it is laying with the small face down, it becomes a row lock. If it is lying on the four-inch face, it is a header—those are terms used in the way in which a brick is laid. Brick can only be laid in three different ways—they have three different dimensions.

106. Q. Then I am to understand the matter of bonding is the arrangement of the brick on the face of the building?

A. It is.

107. Q. It has nothing to do with the mortar between the joints, that is not the bonding, or, "brick bonding"?

262 A. Bonding is the placing of the bricks, not the thickness or color or shade.

108. Q. There are different names for these forms of bonding. What kind of bonding was on this building?

A. Flemish bond.

109. Q. And that Flemish bond consists of what?

A. Alternate header and stretcher.

110. Q. All the way across the building?

A. Yes.

11. Q. And that would be on the first course. What would be in the second course?

A. That would depend upon the elevation of the different floors, that would determine whether or not the Flemish bond was carried all the way through, and, generally, the Flemish bonding has alternating courses, laying stretchers and headers, so that where a header comes on one, a stretcher is on the next.

112. Q. What is a common bond?

A. A common bond is just another name for just laying headers of the stretchers in alternating courses, the stretchers and then the headers.

113. Q. No headers in it?

A. The American bond is just the up and down or common bond, in which it is dependent entirely upon the——, but there is a bond course, from the 4th, 5th, 6th and 7th row, it is a bond course of headers entirely along, and tying in the stretchers.

114. Q. Well, now in the American, then, there might be
263 four, five, six, seven, or either, courses?

A. Well, certainly.

115. Q. Before using his stretchers?

A. Stretchers.

116. Q. And above that course would be all headers, all the way
across?

A. One across, all the way.

117. Q. Might have been?

A. Yes.

118. Q. Well, now, what did you have to do with the bonding
in any of these buildings at Roanoke?

A. I laid out the brick coursing for buildings, 1, 2, 4, 5, 6, and 7.

119. Q. What do you mean by "laying it out"?

A. It was necessary to so arrange, and so investigate the coursing, that where there was a door or window the jambs would have to be balanced.

120. Q. What made that necessary? Was that the direction of the superintendent and his assistant superintendents that it should be so made?

A. Yes.

121. Q. If you know, or do you know?

A. I know that he insisted on having that sort of thing, whether or not that is a part of the specifications, I wouldn't say.

122. Q. The way you put it was on direction from whom?

A. Captain Feltham.

123. Q. Captain Feltham?

264 A. Yes, sir.

124. Q. Direct from him, or through Mr. C. W. Roberts?

A. Direct from Captain Feltham.

125. Q. Ordered you to lay out the bonding in these buildings which you have indicated, and, in order to lay it out, what did you actually do? Was there anything in the way of diagrammatic presentation in the matter?

A. Yes, sir.

126. Q. Well—

A. Yes, sir; I laid out four alternate brick courses, two for what would occur on the first floor, you have to take into consideration the windows, and two for the second floor, in the event there were two stories. In the event, there were three stories, there were three sets of courses. So that, when the brick was laid, they have to lay the first floor, of course, first, and as they went up they would have taken into consideration what occurred in the first floor, the first layers, practically in the right place to work out that way.

265 JOHN T. CLARKE, a witness produced on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. KILPATRICK

By the COMMISSIONER:

1. Q. State your full name.

A. John T. Clarke.

2. Q. How old are you?

A. Forty-eight.

3. Q. You reside where?

A. Montgomery, Alabama.

4. Q. Your occupation is what?

A. Office manager for Algernon Blair.

By Mr. KILPATRICK:

5. Q. I hand you a file, here, containing numerous papers, and ask you if you will tell us, in a general way what those are? (Shows file of papers to witness, who examines them.)

A. These are our file copies.

A. These are our file copies, carbon copies of correspondence as addressed by us to the Veterans Administration, and the originals of letters received by us from the Veterans Administration.

By the COMMISSIONER:

7. Q. Concerning this job?

A. Yes, sir—concerning the Roanoke job, the Roanoke Hospital.

266 8. Q. Are they arranged chronologically?

A. They are; yes, sir.

Mr. KILPATRICK. We offer these in evidence, subject to verification.

Mr. WATSON. Subject of verification.

The COMMISSIONER. They are offered as Plaintiff's Exhibit 27 (marked).

9. Q. I hand you now file, or folder, containing papers, and ask you to state what those are [hands file of papers to witness, who examines them]?

A. These are our office carbon copies of correspondence, addressed by us to the Redmon Heating Company, and the originals of letters received by us from Redmon, in connection with the Roanoke Veterans Administration Hospital job. I see in one or two cases here carbon copies of letters from Redmon, where the originals were addressed to our Salem office, and these carbon

copies came to our Montgomery office, and were placed in the Montgomery office file.

10. Q. They all relate to the Redmon angle of it?

A. Yes, sir.

Mr. WATSON. Subject to verification, we object to the introduction of all these copies.

The COMMISSIONER. The objection is overruled and the exception noted. Is the objection of the Government, that the Government figures that he has no business going into the Redmon angle of the matter?

267 Mr. WATSON. Object on the ground that it is irrelevant and immaterial, and prejudicial.

The COMMISSIONER. Overruled and exception noted. Then you are offering them?

Mr. KILPATRICK. Yes, sir.

The COMMISSIONER. Mark them "Plaintiff's Exhibit 28," all subject to verification (marked).

C. W. ROBERTS, a witness produced on behalf of the plaintiff, testified as follows:

268 12. Q. And, now, then, at Roanoke. You were in the employ of Mr. Blair on a salary basis?

A. Yes, sir.

13. Q. Were you sent to Roanoke to have general superintendence of that job?

A. Yes, sir.

14. Q. Did you remain there until it was completed?

A. Yes, sir.

15. Q. When did you first go there?

A. I went there on the night of December 27th, 1933, I think, and met Mr. Blair on the 28th.

16. Q. When did you actually begin work there?

A. Well, our engineer was at work when I arrived there.

17. Q. Who was that?

A. Joe Lacey, with his assistants, was laying out the work when I arrived, and we immediately prepared to build our field offices, and got my field office built, and continued laying out all work from that time on.

18. Q. Who did you have to assist you in the work up there?

A. At that time?

19. Q. Throughout the job?

269 A. Well, I had a great number of men. I had Fred Durden, he was my immediate assistant. And T. E. Devinney, as office manager, and I had Mr. Berry as what I termed the cashier, and other office help, and in the field supervision, I

had J. T. Roberts and Willie Berryman, and Mr. Ireland—all those superintendents came with me, and Mr. Perkins I hired at Roanoke. Then I had some five or six carpenters, foremen, and labor foremen, most of which had been in our employ a great length of time.

20. Q. Did you have what you considered a full complement of supervisory foremen and labor on that job?

A. I always considered that I was overstaffed.

21. Q. Just what do you mean by overstaffed?

A. Well, more than I would require under any conditions of any series of buildings similar to that.

22. Q. Well, now, who consisted of the "overstaff," if you can designate it that way?

A. Well, I didn't mention two that I particularly considered over-staff, Mr. Ellingsworth and Mr. Neal Andrews, from Montgomery, spent a majority of the time there.

23. Q. When did you actually begin work, other than the laying out by Mr. Lacey? What was the character of that work?

A. We started excavations, I think—well, it was the early part of January, between the 10th and the 15th of January, actual excavations on buildings.

270 24. Q. You are familiar with the plot plan and all the specifications, and other details of the job?

A. Yes, sir.

25. Q. You had them before you?

A. Yes, sir.

26. Q. Did your excavation proceed in an orderly manner at first?

A. It did.

27. Q. Now, what was the character of that excavation? Was it all outdoor work, or was it indoor work, or what?

A. It is the immediate grading, to permit the buildings to start up, what we call the building excavation start off. That is, where there is a basement, we cut out for that. Where there wasn't a basement, we went down to the basement slab, where the basement slab rests on.

28. Q. Was that under—whose direction was that immediately being done under?

A. Joe Lacey had charge of that end. Him and Mr. Milam was superintendents.

29. Q. State what progress he made in the excavation, with reference to the proposed schedule or plan of that building?

A. We started, I would say, the 14th or 15th of January. If my memory—I think it is that we had the excavation for the powerhouse group completed immediately after the 20th of Janu-

ary, say the 22nd, or along there, and then over there, immediately thereafter, number 7 was completed, and we continued right on with the foundations, some of them a little longer than that, because there was more excavation under some of the buildings, but we moved at a rapid rate.

30. Q. Who had the contract for the plumbing and heating and other things generally known as the mechanical equipment work?

A. Redmon Plumbing & Heating Company, from Louisville, Kentucky, I believe.

31. Q. You got those excavations made for those buildings, the service group, number 7, and proceeded—was there anything that the Redmon Heating Company should have done to work in harmony with you from that time on?

A. Yes, sir.

32. Q. Well, did they do it?

A. No, sir.

33. Q. What was there that they could have done?

A. Well, say in the service group, they should have had the underground work, that went under the slab work, that was the logical time to place most of the underground work.

34. Q. What was the underground work that Redmon had to do?

A. It consisted of a sanitary plumbing and draining system, and—

272 Mr. WATSON. I ask that all this testimony with reference to Redmon be stricken from the record, as immaterial, irrelevant, and incompetent.

The COMMISSIONER. I overrule it.

Mr. WATSON. Note my exception.

By Mr. BALL:

35. Q. What was your answer?

A. Well, the underground work at that time, or the underground work that should have been done at that time, was what is known as the sanitary sewers, from the point that goes immediately under the slab, the ground floor slab.

36. Q. In how many—

A. Connections that lead up through that slab.

37. Q. In order for him to do that, was it necessary for him to dig a trench in each of these places, in order to put in the pipe and backfill?

A. Yes, sir.

38. Q. Until he did that, what could you do, if anything, towards your program in the basements of those buildings?

A. Well, we could heel the building in. That is, we built our outside walls and interior footings, and prepared for the floor base.

39. Q. Well, do you mean to say that Redmon should have been there before you put in your footings for the outside walls, too?

273 A. On the assumption that we would have normal progress.

40. Q. Did he, or not, do that?

A. No, sir.

41. Q. When did he do it?

A. He never did do it, except in a small way. He attempted to in some two or three of the buildings.

42. Q. Well, did that delay you in that work?

A. It delayed me very much in connection with my partition and other work that I had to do—not right at that particular time; however, it delayed me immediately thereafter—I was delayed by it.

43. Q. Now, did you have anything to do with checking the progress schedule that Mr. Blair had?

A. Yes, sir; it was prepared and sent to me to verify, and which I did make some alterations and changes in our progress schedule.

44. Q. Did you study the whole proposition in order to do that?

A. Yes, sir; I had to.

45. Q. They sent to you certain pencil sheets (showing papers), preliminary progress schedule, dated 1/25/1934, which are in this case as exhibits, Plaintiff's Exhibits 23 and 23-A, which I now show to you, were those what were sent to you, that you were speaking about?

A. Yes.

274 The COMMISSIONER. I understood those were what the office revised, after they heard from Mr. Roberts. Maybe not.

Mr. WATSON. No, sir.

Mr. BALL. I think they were sent to him.

By the COMMISSIONER:

46. Q. Something was sent to you, and you made some alterations, and they brought this up to date at the office. Maybe I am wrong. He will know. No. 16 is the blueprint. Do you recognize this paper, as having had one like this, checking it and returning it to the Montgomery office?

A. I don't know that I have.

47. Q. If it isn't this particular paper?

A. Those figures, I recognize the dates and the paper, as being one like they submitted to me.

By Mr. BALL:

48. Q. Well, look at the dates, at the left of that paper, which is Exhibit 23-A, and see whether you had anything to do with making those dates. They are different from the corresponding figures on Exhibit 23?

A. The way those dates, the way that date is different to this, I did change it because of our other set-up at the time, I took it, and those first ones is actually what happened, what had been accomplished; and then planned what I could accomplish, and what I thought I could, at that time, and wrote the date in accordingly.

275 49. Q. In your judgment, based upon your own experience, and your knowledge of the plans and specifications on this job, within what time could that entire project have been completed—by what date?

A. By November 1st.

50. Q. Now, I show you a blueprint.

The COMMISSIONER. 16.

Mr. BALL. Marked Exhibit 16, which purports to be a progress schedule on this job [witness looks at 16]. Did you have a copy of that at the job?

A. Yes, sir.

51. Q. Did you furnish a copy of it to Captain Feltham?

A. I did.

52. Q. Did you furnish a copy of it to the Redmon Heating Company or its representative?

A. I furnished one to Mr. White, who was his superintendent.

53. Q. Well, Mr. White came there March 19th, according to the testimony, and do you know whether or not that was posted in the Redmon office building, or in the Government office building, or either?

A. It was posted in the Government office, but I am not certain whether it was posted, I think it was, but I am not certain, in the Redmon office.

276 54. Q. You do know it was actually submitted to Mr. White, the representative of the Redmon Heating Company?

A. Yes, sir. I submitted it to him.

55. Q. Did you ever discuss with Mr. White the fact that the Blair organization expected to finish and complete the entire project by November 1st?

A. A great many times.

56. Q. In what connection did you discuss it and mention it?

A. In urging him to do his underground work, that was delaying, that prevented me from proceeding with certain work—floor slabs, to start off with, then partitions.

57. Q. Did Redmon have anyone there prior to March 19th, when Mr. White came, as superintendent?

A. No, sir.

58. Q. Did he have any equipment there, material, to carry out this job?

A. No, sir.

59. Q. Had he ever been there himself, at that time, or at any time subsequent, did he come?

A. He and Mr. White and an attorney came up there in the early part of January, I would say before the 10th of January.

277 60. Q. Was that attorney's name Atkinson?

A. I don't remember.

61. Q. Was he the attorney of the Maryland Casualty Company?

A. He may be. He told me it was his attorney, that is all he told me.

62. Q. What took place then about the——

A. He only spent a very short time—he came to my office and introduced himself, and sat down and talked possibly thirty minutes before we got with him. I introduced him to Captain Feltham, and he spent a few minutes with him, and left there. During that time he told me he would have a man return there within a week, to look after coordinating and carrying our work on together.

63. Q. Did he spend much time with you, or did he spend most of it——

A. He spent the most with Captain Feltham.

64. Q. How long was he there?

A. Less than half a day. I would say, possibly, about two or three hours.

65. Q. Did he have a man there within a week or so after that?

A. No, sir.

66. Q. How long was it before Mr. White came, did you say?

278 A. He was the first man. It was late in March, I don't remember the exact date—March 19th, I think it was.

67. Q. Well, when Mr. White came there, did he bring any force with him, or any equipment?

A. No, sir.

68. Q. Or any materials?

A. No, sir.

69. Q. Did he say that he had ordered any of these things necessary to carry on the job?

A. Well, I don't know that I could answer that direct. He stated various times they were working up materials and schedules and would be prepared shortly to carry on their work.

70. Q. Later, up about March 19, 1934, was Redmon's failure to do anything on that job interfering seriously with you, delaying your in your progress?

A. A great deal.

71. Q. Did you notify Mr. White, or Redmon, to that effect?

A. I notified them of the delay a great many times. Mr. White. I am not certain about the correspondence with Redmon. I don't think, except in connection with drawings and information, that had to come from our office, is the only letters written to Redmon, direct.

72. Q. Redmon Heating Company had, under its contract a large amount of what we call outside work to do in connection with the work that was inside?

A. great deal of it.

73. Q. What did that consist of, in a general way? How extensive was it?

A. It consisted of water lines that came in from Salem, that supplied all of the buildings and powerhouse, consisted of the sanitary sewers, that fed into a creek some half a mile from the building operations, the underground electrical work, which was a considerable job, and the underground steam work which fed the various buildings.

74. Q. Now, what was the relation of that work to your outside work?

A. Well, it came in contact with our grading, and Blair's road work crossed and crossed a good many times.

Mr. WATSON. We renew our objection to testimony about the Redmon contract. I move to strike, as we have been offering to do all the time, all this witness' testimony.

The COMMISSIONER. All your records show, the Government's records show, that this work includes the work under the Redmon contract, shows that it is a continuous job. I overrule the objection, and the exception is reserved.

280 Mr. WATSON. Note my exception. This appears to be all repetition.

The COMMISSIONER. This particular witness testified as to the Redmon contract, and the various work that they performed, and how it coordinated with the Blair contract. Of course, if plaintiff's counsel knew that the Government was not going to seek to rebut those facts, they would not have to go into so much cumulative testimony. But they have no means at this time, I take it, of telling whether the Government is going to elect to

rebut these conditions, and whether it is going to resist or have a different line of testimony. I think the Court also expects a reasonable amount of corroboration, but not excessive.

By Mr. BALL:

75. Q. How soon could the Redmon Heating Company have begun its outside work?

A. There is no reason why it could not have begun immediately.

76. Q. In January 1934?

A. In the early part of January.

77. Q. To dig those trenches and get out of your way?

A. That would have been the normal procedure.

281 78. Q. How long would it have taken him to do that outside work if he had begun promptly in January?

A. In my judgment, it should have been done in four or five months.

79. Q. You say, in your judgment: have you had much experience in that kind of work, so that you could form a judgment of it?

A. Yes, sir.

80. Q. You have had some operations similar and have had it carried out, and it is your judgment that if he had done his outside work within that time, would it have permitted you to do your outside work within the November 1st, or as you stated the job could have been completed within your limit?

A. Yes, sir.

81. Q. If he had started promptly in January, would you have had to wait, had he completed his outside work, and you had gone on with your outside work?

A. No, sir.

82. Q. How soon could you have started if he went to work promptly?

A. We could have started our outside work in May, if he had started in January, early, and carried on.

83. Q. Now, then, how soon would you have completed your work?

A. The early part of September.

282 84. Q. Did you have the forces, and the equipment, and the machinery necessary to do that outside work?

A. Yes, sir.

85. Q. His work, then, might be considered as the outside work and the inside work?

A. Yes, sir.

86. Q. The inside work, then, consisted, stating it in a general way, of what?

A. It consisted of his underground plumbing or sanitary work and then the stacks and plumbing lines leading to the fixtures, through each floor, passing up through out of the roof. Then his conduits that were interwoven, in some places, inside the slab, and some few places suspended under a slab, with the light boxes and then in the walls he had conduits leading to various points. Then he had the steam lines which came in a trench that was under the concrete floor, and then passed up through the various floors, and each radiator with a return came immediately around the wall and back into the trench and returned to the boiler room.

87. Q. All that applied to most of these fourteen buildings, that you were erecting?

283 A. Yes, sir.

88. Q. Was it necessary for your orderly progress, especially for you to keep up with your program progress chart, that he work along and do his work accordingly with yours?

A. Absolutely necessary, yes, sir, to carry on. The electrical work, that enters into the slabs, and the sleeves affect the building of our forms for the concrete slabs, because they have what is known as headers between the steel pans that have to be built in with wood and the pans removed.

89. Q. Those are the concrete forms you call "pans"?

A. Yes, sir; went between those pans, and where that comes in near the pan, we have to remove the pan and put a wood header, and this should be located inside that, along with the form work.

90. Q. I show you a kodak, and ask you if that is a representation of some steel forms, called "pans"?

A. Yes, sir; that is what is known as the steel pans, just a pan construction, I call it.

91. Q. Did you have a great deal of that on the Roanoke job?

A. Yes.

284 Mr. WATSON. Is that an exhibit?

Mr. BALL. It will be a little later on. You may gladly look at it [kodak shown to Mr. Watson].

By Mr. BALL:

92. Q. Now, you say there was nobody there, no equipment, and no material, up to March 19th, and therefore, no work done on the inside or outside by Redmon?

A. They had no representative there, at all.

93. Q. Up to that time, had you sustained delays throughout the project on account of Redmon's failure to perform?

A. Up until that time, I don't think I had sustained an actual delay, except in connection with the foundation of the power-

house. His information that we needed to prepare work that started off immediately, that, I don't think I was held up on construction until that time.

94. Q. The powerhouse was No. 13?

A. That's right.

95. Q. And your contract covered the building and the structural steel, and what else?

A. The building, proper; that is the building, there was certain things in that building, like pipe trenches, and pits, and storage bins, in the principal part, that were under the plumbing and heating contract.

285 96. Q. That structural steel was a part of your job?

A. Yes, sir.

97. Q. Was that subcontracted?

A. Yes, sir.

98. Q. To whom?

A. The Virginia Bridge Company.

99. Q. The Virginia Bridge & Iron Company, to be more accurate?

A. Yes, sir.

100. Q. You say you were delayed, then, up to that time, by Redmon, on the building?

A. Yes.

101. Q. Now, how soon after March 19th before Redmon put in any considerable force?

A. On that job?

102. Q. Yes?

A. He never did put any considerable force there.

103. Q. What was the largest number of employes he had on that job at any time?

A. I never was able to find more than four plumbers and two steam fitters, and some three or four laborers. I was told
286 a various number of times by Captain Feltham and Mr. White that he had some additional men, or sufficient men, but we were never able to see them at work, or find them.

104. Q. Well, I will ask you whether on June 14, 1934, Redmon had on the job four electricians, four plumbers, two steam fitters, three helpers, six laborers—making nineteen men on that job?

A. I don't think he ever had that many at one time, to work; he might have had that many on the pay-roll out there at some one time. I am quite sure there never were that many men at work.

105. Q. Did he have on June 27, 1934, two electricians, four plumbers, one fitter and helpers, and five laborers? Do you remember June 27th? That is when his contract was terminated?

A. I don't think he had that many at work. There might have been that many there. They weren't working. I don't think

he ever had that many at work. He might have. It is possible for him to have had that many.

106. Q. Up to June 26th, when his contract was terminated, what had he accomplished on that job?

A. He had just, that it is almost, you might say, nothing.

The COMMISSIONER. Almost negligible?

287 A. Yes. He had put down very little underground work in some two or three buildings; he had installed a slight amount of conduit in slabs. Other than that, I would say nothing.

107. Q. Would you say that he had performed as much as five per cent. of his whole contract, which amounted to something over three hundred thousand dollars?

A. By all means no.

108. Q. After June 26th, did Mr. White remain there?

A. Yes, sir.

109. Q. How long?

A. He remained there until the job—until I left there, or practically so.

110. Q. Did he go into the employ of the Virginia Engineering Company, which took the contract from the Maryland Casualty Company to finish the Redmon work?

A. Yes; he continued in their employ.

111. Q. Now, did Captain Feltham or Mr. Dodd ever complain to Mr. White or to you about Redmon's failure to perform his contract, I will say prior to June 26th?

A. A great many times, in conversation with Captain Feltham, he told me he doubted seriously if they could carry it out, and that he was making every endeavor that he could to
288 force their hand, to put them to work. Immediately after I was there, Captain Dodd told me—not Captain Dodd, it is Mr. Dodd—that he looked for trouble in that line because they had had some experience with them in the past.

Mr. WATSON. We object to what Captain Feltham and Mr. Dodd had to say to the witness.

The COMMISSIONER. What is the ground? On what ground is the objection made?

Mr. WATSON. They were Government representatives on the job, and they have not testified. We think it is objectionable.

By Mr. BALL:

112. Q. You have talked with Captain Feltham, and Captain Feltham talked with you, complaining about Redmon not doing his work, and not having anybody there, and no equipment, and no material on the job?

A. Quite often.

113. Q. How often did Mr. Dodd do the same thing?

A. Well, I would say two or three times a week.

114. Q. What was the specific ground of complaint on their part about Redmon? How did they express it?

A. That he had no material, and no equipment, and no forces there to operate with.

115. Q. Did you say that one of them said to you that he had had trouble with Redmon before, and didn't believe that he would every carry out his contract?

A. Mr. Dodd told me that.

289 116. Q. Did he say on what job they had that experience?

A. I don't think he did.

117. Just to refresh your memory, did he say anything about Roseburg, Oregon?

Mr. WATSON. We object—that is leading.

The COMMISSIONER. I think that is quite leading. But he has got the benefit of the suggestion now, anyhow. What is your answer?

A. My answer was that he said that that department had had trouble with him in the past.

118. Q. You don't recall anything about the particular difficulty?

A. I don't recall. I couldn't recall that.

The COMMISSIONER. In other words, the objection would be sustained.

By Mr. BALL:

119. Q. How soon after January 1, 1934, did they begin to state to you that they had doubt about him finishing his contract, or performing it?

A. It was very early after I arrived there, when we discussed this phase of it. I wouldn't attempt to fix the date.

120. Q. Now, after the contract was terminated with the Redmon Heating Company, and the Virginia Engineering Company had charge, did your work proceed?

A. It proceeded very rapidly after they had time to accumulate the materials and assemble their men. They began to
290 assemble their men very shortly after they took over the work.

121. Q. Do you remember when they got the contract?

A. It occurs to me it was June 18th. I am not certain.

122. Q. You mean—

A. July 18th, or July something; and the first men commenced arriving on the job, or their forces commenced arriving the latter part of July, and I think by the first of August, they had a good force at work.

123. Q. What equipment did they put on there to carry out the Redmon job? We will take the outside work, first.

A. Well, on the outside work, they had ditching machines, I would recall two large ditching machines, they had compressor with pneumatic drilling equipment, they had backfilling machines.

124. How much man power?

A. Well, I would say from forty to fifty men. I am not certain. I would not think less than forty men from the time they got the outside crowd operating.

125. Q. Did they have additional men and equipment on the inside work?

A. Yes, sir; they had a considerable number of men inside.

291 126. Q. Would say the maximum number of men the Virginia Engineering Company employed in doing the Redmon work, after that company did take it over?

A. On the electric work, alone, their superintendent told me, he had thirty-eight men at one time. I didn't check that, however.

127. Q. About the plumbing?

A. He had a considerable number of plumbers—he had them in every building, and some three or four in the larger buildings.

128. Q. Now—

Mr. WATSON. Your Honor, what he told about this material, I don't think he ought to testify to that, and I object to him testifying only what he knows about how many men there were there.

The COMMISSIONER. Yes; I think that objection should be sustained.

A. I wasn't calling in my mind.

The COMMISSIONER. I think, maybe, the Government would want to see what progress they were making. Go ahead.

A. I met Mr. Redmon in the early part of that operation, as to the number of men he had employed, and I actually could not recall just the given numbers. I did make daily reports, which would show.

292 Mr. WATSON. I withdraw my objection.

A. Which would show my count of them, I think, at that time.

Mr. WATSON. I assumed that Mr. Roberts, quote naturally, was in with the other people, and was quoting Superintendent White and the other Redmon people, and that he would have some knowledge of the purpose, and where they were, and something like that, wouldn't he? They thought so and so, and so and so said.

A. They kept the reports for that reason so they could know what had been done.

By the Commissioner:

129. Q. Independently of what they thought, what did you think?

A. I thought it was a wise thing to do.

By Mr. BALL:

130. Q. Well, how did it turn out?

A. Not so good from my part.

131. Q. What do you mean by that?

A. Well, he had a way of putting off things.

132. Q. Well, after Mr. White became the representative of the Virginia Engineering Company, did you make appeals to him to expedite the work, so as to get out of your way?

A. Well, I made them, principally, to Mr. —

293 133. Q. Updike?

A. Updike is the name. I went to him for various details and he would furnish it, Updike, I went to him for certain things that he was supposed to furnish for Updike.

134. Q. I will ask you, at any time during the performance of the Blair contract, he or his forces ever interfered or delayed in the execution of the Redmon contract?

A. Ask that again, please.

135. Q. Whether at any time, during the progress of the Blair contract, his forces interfered in any way with the Redmon execution?

A. No, sir; did not; on the other hand, we made every endeavor to assist, and to be helpful as we knew how to.

136. Q. Well; in what way could you, and did you, be helpful?

A. We offered our assistance in almost every problem that came up, in helping them to arrive at a workable solution of his difficulties.

137. Q. Now, when did the Virginia Engineering Company complete the Redmon contract?

A. They had some representatives there when I left Roanoke; whether they was entirely through or not, I do not know.

138. Q. When was that?

A. It was in February.

294 139. Q. Well, when was the Blair job finished?

A. February 1935, I think.

140. Q. Was it February 14, 1935?

A. Yes, sir; and they still had some representatives there, and some few open ditches.

141. Q. The Government accepted that work at that time, but the Redmon contract had not yet been finished?

A. Yes, sir.

142. Q. Now, getting to the inside work, tell us more in detail the interference by Redmon Heating Company, and the delays caused thereby in your work. Confine it to Redmon Heating Company.

A. Well, in a construction, that is, of that type, you fit steel in building forms, as stated a while ago, and they had boxes or outlets for lights, that had to be located in a definite location in every room, and, in a great many cases they came in the pan, partly, and there is a header has to be built in that pan, each side of the light, a solid panel across that light. They never had men there when we were building the forms to designate the location of these lights. They never had anyone there when we were building the forms to
295 designate any location of sleeves, and they demanded that we build forms without supplying that information, and then they proceeded to locate these around, and Captain Feltham sustained them in this demand. This was a considerable delay, and, in fact, we had to remove pans that was bolted in, especially to remove the steel and relocate those things. It was prolonging the slab some two or three days in most every case.

143. Q. Was that chargeable to Redmon's delay?

A. Absolutely, for the want of location of those things, we would have built them in in the normal way, while we were constructing it.

144. Q. How long did that continue, and how often was it repeated?

A. It continued until after the Virginia Engineering people came there, and on all of the buildings save one, which was No. 6.

145. Q. Now, you say, Mr. Roberts, that this Blair job would have been finished by November 1st, but for the interferences. As a matter of fact it was not completed until February 14, 1935. Will you state the major cause of his failure to perform his contract by November 1st, 1934?

A. The major cause was that at each stage of the work,
296 prevented us from starting the various parts, in order to carry our work on in a normal way—we were unable to start partitions, we were unable to install a roof, because the plumbing pipes came through the roof, with the flashing furnished by the mechanical people, built in as an integral part of the roof, and we were framing roofs before Redmon gave up his contract, with no material whatsoever, and no ground work done, much less up through the building and into the roof. Therefore, they held up, not only the inside, but held up the roof itself, on those buildings.

146 Q. Were you notified on or about June 26th, that he had abandoned the contract, and that the contract was terminated by the Government?

A. Yes, sir.

147. Q. What became of all the material he had on hand at that time, if any?

A. Well, it was gathered up—I think Mr. White, under the supervision of someone else, attempted to install a slight amount of it; but some of it was left there for the Virginia Engineering Company.

148. Q. I believe that you said that up to that time nothing had been done on the outside work on the Redmon contract?

A. Yes, sir; that's right.

297 149. Q. On the blueprint, we call it the plot plan, as Plaintiff's Exhibit 10—I show you that exhibit, and ask you to indicate the extent of the work that had to be done outside by Redmon, in order to permit you to proceed in accordance with your progress schedule?

A. Well, they had lines which cross under all these areas, practically along through the front of this lot, that cross all these dotted lines. I haven't looked at those plans [examines same].

150. Q. You know what was there?

A. Yes. It was interwoven with electric lines, gas lines, water lines, and sewer lines, which is indicated in these lines crossing here.

151. Q. The white lines crossing the red?

A. The white lines crossing the red, all over this drawing. This was a tremendous ditch here, some twelve—

152. Q. East of Building 7?

153. Q. It is the upper left-hand part of the plat, here, is it not, where you are pointing?

A. I am wrong on that. This was the big ditch down here, coming on across here, and those both cut straight ditches.

154. Q. "Both," the upper left-hand part of this map.

298 A. This was a deep ditch.

155. Q. By that you mean the upper left-hand corner?

A. The upper left-hand corner, yes, sir; leading out of the reservation.

The COMMISSIONER. That was a tremendous ditch, in the upper left hand corner, where it fell and went out off of the reservation?

A. Yes.

Mr. BALL. All right.

A. That is also true down in the residential group, they are interwoven.

By the COMMISSIONER:

156. Q. The lower right-hand corner?

A. The lower right-hand corner.

By Mr. BALL:

157. Q. Now, as the result of that delay, did it cost Mr. Blair any considerable amount of money, more than otherwise he would have had to incurred?

A. Yes, sir.

158. Q. You have no way to tell approximately how much?

A. No. but the operation was very much more expensive, because we were forced to build our roads and walks in sections.

159. Q. But, on your inside work, why did it make it more expensive? What was the effect on your proceeding with all your forces, in your inside work?

299 A. The effect on my completing my work in the beginning was delay, and the reworking of forms, on account of the sunshine and rain standing on those forms, and then reworking the forms to take care of the headers and sleeves, that would naturally go in with the building of the forms, and would be built as a part of the forms at the form cost.

160. Q. You are talking, now, about wooden forms?

A. Wood forms for concrete. All these on the inside, it just held us up until we had to do it at a very much more, well, rapid rate than we would if he had done the inside work in a normal way to expedite our work, to try to go ahead, and the cold weather, too, we were compelled to spend additional money to get out on time.

161. Q. But, before you come to the cold weather, what effect did it have on the efficiency of your working forces, by being delayed and held out in this way?

A. That is, before cold weather, at the middle part of the operations, are you talking about?

162. Q. Yes—could you get production from your forces, working them in that way?

A. I am trying to answer in terms of—it was holding us up and caused confusion, delays in moving men from one building to another, and trying to keep the men employed; and to
300 carry the work on, we moved the men across from building to building, and we had some mechanical installation back of that that we had just completed, which is very expensive to change your forces from job to job, and, at times, lose considerable time pending the installation of some mechanical part, that we had reason to believe was being installed immediately.

163. Q. State if there were any other elements that entered into your failure to complete by November 1st on this job?

A. The critical attitude of the Government supervising forces, I consider a tremendous handicap. We tried to overcome that.

164. Q. Explain that just as fully as you can, definitely.

A. Well, almost from the immediate start, Mr. Dodd took the attitude that all employees must pass his acid test, you might say, and he also charged, in a great portion of them, that we employed them in an improper manner, and they were not eligible for the jobs.

165. Were you required to get your laborers from—and mechanics, from an employment bureau, the Federal Employment Bureau of Roanoke?

A. The contract said I must employ all labor through the bureau.

301 166. Q. Well, did you do that?

A. Yes, sir; in every case.

167. Q. Well, what complaint, then did Mr. Dodd make, and how did it interfere in the matter of labor?

A. To start with, he stated that I didn't have the right proportion of Veterans, and then his greatest complaint was that there was nonresidents of Roanoke employed.

168. Q. How did you—explain just how you did actually get your labor from the Federal Employment Bureau?

A. We made request daily to the National Employment Office in Roanoke, and requested a certain number of carpenters, a certain number of laborers, or skilled workmen that we wanted, and stated on that the number requested for a definite time.

169. The number only—

A. Well, on each request we stated the number at our offices on Monday or Tuesday, or the day that we needed them, to have to work, in all cases.

170. Q. Did the Employment Bureau send them to you in response to your request?

A. Yes.

171. Q. How did they indicate as to ex-service men, and things of that sort?

302 A. The service men had one color of card, and the others another; one had a blue and one white, one way or the other—I don't recall just which was which—but one had a blue and one had a white card.

172. Q. And when these men came with those cards, what did you do about employing them?

A. We requested all white cards—or all Veterans' cards—to sign up first, and, when they were exhausted, we took the additional supply from the other colored cards. That was standard, all the time.

173. Q. Did you reject any ex-service men?

A. Not, except that they were handicapped, where we could see, by having but one arm, or a wooden leg.

174. Q. Physically unable to perform labor?

A. Physically incapacitated, physically unfit for the work. We would give them a trial, if they insisted.

175. Q. Did Mr. Dodd interfere with you in selecting your own labor from the ex-service men?

A. A great deal.

176. Q. Well, of the others, who weren't ex-service men, after you exhausted the ex-service men, and took the others—did you undertake to inform him about the specifications of the contract requiring you to have local men as far as possible?

303 A. We had no occasion to ask him his address; he told us where to get him, and his address showed in the card, when it came to us, as Roanoke.

177. Q. Did you rely upon the Employment Bureau in all these matters?

A. Absolutely.

178. Q. Was there any other practical way for you to do?

A. No, sir; not and follow the contract requirements.

By the COMMISSIONER:

179. Q. You say Mr. Dodd embarrassed you in the matter of service men, and you stated he did so a great deal in the non-service men?

A. Nonservice men.

180. Q. The record shows.

A. Because he required, demanded I employ more. I misstated that. I misunderstood his question, if that is what he said.

181. Q. I may have got it wrong, but is cleared up now, anyhow.

Mr. BALL. Yes.

181. Q. Come now to a specific case. Did he complain about Clenny?

A. A great many times.

182. Q. And Pilant?

A. Yes, sir.

304 183. Q. On what grounds?

A. He always claimed they were incompetent.

184. Q. Well, were they?

A. And that we required and expected men to do things that they should not do.

185. Q. Well, were they incompetent? Did they violate the rules in any way?

A. They are very competent men, both of them.

186. Q. Had they been connected with the Blair organization prior to that time?

A. Quite a good long time.

187. Q. What was the final result on Clenny?

A. He was discharged.

188. Q. By whom?

A. Captain Feltham.

189. Q. Was he a man of unusual value in the Blair organization?

A. He is one of our best men in his line, that is, the steel and concrete and placing reinforcement, too.

190. Q. Was that his special duty there in regard to steel?

A. He had charge of placing reinforcement steel.

191. Q. Placing includes the binding of the work?

A. Tying in to it; putting it in place.

305 By the COMMISSIONER:

192. Q. Why did he want you to fire him?

A. He stated for incompetency.

193. Q. That is the only ground he stated, or put it on?

A. He permitted a piece of steel to be cut and turned around a corner, was the only thing.

194. Q. Did you investigate to satisfy yourself whether or not that charge was right or wrong?

A. Yes, sir.

195. Q. Was it right or wrong?

A. It wasn't wrong.

By Mr. BALL:

196. Q. It was right?

A. The steel was right.

By the COMMISSIONER:

197. Q. The charge was wrong?

A. The charge was wrong.

By Mr. BALL:

198. Q. How about Mr. Pylant?

A. A very competent young man.

199. Q. What was his objection to him?

A. His complaint was that he was incompetent, but he didn't discharge Pylant.

200. Q. You retained him on the job?

A. I retained him until after the job.

By the COMMISSIONER:

201. Q. Well, what was the nature of his work?

A. The same; he was assistant to Mr. Clenny.

306 By Mr. BALL:

202. Q. There was trouble with Roy Reese—what was that, and was it well founded?

A. The Roy Reese trouble? There was quite a number of them. I remember Roy Reese—let me recall—there were so many of those.

203. Q. Well, if you don't remember. What did he state to you about W. L. Crawford, or do you remember?

A. Wait a minute.

204. Q. And another—three or four?

A. That was somebody on the reinforcement, wasn't it, on the reinforcing group?

205. Q. Well, I don't know.

A. That is the reinforcing—I can't recall those names, right off.

206. Q. Well, what is his—

A. The names are familiar, but there are so many different parts involved, I can't place these particular men. I remember Shepherd, and Webb, and Reese.

207. Q. How about Shepherd?

The COMMISSIONER. Did he order any discharged, which, upon investigation you found, or concluded, should have been discharged?

307 A. I remember Shepherd, in particular, was one; but the name that he charged we would not let him perform work, that was a mechanic, and I made investigation of that charge, and he was carrying steel, which consisted of short pieces, something about this long [indicating], I don't know, about four feet long, and poking them into the holes in the form that had been drilled, and he claimed that he was doing mechanical work, and made that charge to Washington, and, in the meantime, he took Shepherd to his office to question him, and took Clenny, his foreman—Shepherd's foreman—to the office, and questioned him in regard to what he was doing, and he made the charge that he was doing mechanical work—they charged a man with doing mechanical work, if he ever laid a piece of steel down in the immediate territory to where it was to be placed—he had to pile it in a pile, and the workmen sort out the pile, and not carry it to the top where it belonged, and that was throughout the life of the job.

By the COMMISSIONER:

208. Q. What happened to him, the fellow that carried the four-foot pieces, and stuck it in the hole? Was he discharged?

A. I don't think I ever discharged him. I don't think I had to discharge him. I am not certain of that.

308

By Mr. BALL:

209. Q. Will you explain, now, just generally, about how Captain Feltham and Mr. Dodd acted about or in reference to the reinforcing steel, about placing it, and carrying it, and tying it?

A. Immediately after beginning, they ruled—well, to start off in the steel, I had a conference with Captain Feltham in regard to the placing of steel, after trying to get experienced steel setters in Roanoke, and he agreed that it was semiskilled work, and we could secure them, and thereby get local men, and not have to go out of the district to get steel workmen, and that we request from the employment office for steel rodmen. Mr. Roberts, of their office, he had charge of that office, came to the job, and stated that he did not have experienced steel men, but he had some semiskilled men that could, under the proper supervision, do our work. At that time, Captain Feltham agreed that I use those men, and we used semiskilled workmen for that work. Immediately following this, Mr. Dodd ruled that all steel work had to be done by skilled mechanics, at one dollar and ten cents per hour.

By the COMMISSIONER:

210. Q. When you say Mr. Dodd ruled that, you don't mean that Captain Feltham agreed with him?

309 A. Mr. Dodd wrote the letter, and Captain Feltham signed it, stating in that, quoted in that letter, what he termed a ruling from the Labor Department, and then, following this, he ordered me to pay the several men we had on that \$1.10 an hour, and for their back time. We, of course, did pay this under protest, and requested skilled men, and from that time forward our men came in there from various points, most of them registered from Lynchburg, and above, in Virginia, and a great portion of them indorsed on the back of the card "Recommended by Mr. Dodd."

By Mr. BALL:

211. Q. Signed by whom?

A. It wasn't signed, just "Recommended by Mr. Dodd," right across the back of the card. That's on the back of the card.

212. Q. Whose handwriting was it in?

A. I couldn't answer that.

213. Q. Those cards came from the employment bureau?

A. The employment office?

214. Q. Yes?

A. And we had a great deal of trouble getting competent men, even then; they would come there, and we would work them some day or two days, and they proved they could not install the steel, and we would go into their experience, and they

310 would say they belonged to the bridgeman's union, and, therefore, they was eligible for that work, so, due to that, Mr. Dodd contended that they was of sufficient qualifications if they belonged to the steel workers' union, and in a great many cases he would make me take a man back, and I would try him as much as four times.

215. Q. If he finally proved to be incompetent, and unable to do the work, what was the result?

A. Why, I would finally get rid of him after contending, possibly, several days with him. In nearly every case I was able to. He told me, though, that, under the same token, he would run John Clenny off:

By the COMMISSIONER:

216. Q. Who told you that?

A. Mr. Dodd.

217. Q. That by the same reason—

A. The reason I was laying off these men. He was the man that he finally did discharge from the job.

218. Q. Well, who was he?

A. He was our steel foreman.

By Mr. BALL:

219. Q. You speak of your steel foreman—that is reinforced steel work?

A. Reinforced steel foreman.

220. Q. What does that have to do with the structural steel?

A. Nothing whatever—no connection between them.

311 221. Q. Now, what was the real ground of complaint in reference to the reinforced steel? Was it the character of the men, or the wage to be paid?

A. You mean his grounds?

222. Q. Yes. His grounds. You say some of them, although they were competent, you had to discharge them?

A. He claimed, at times, that we weren't placing the steel properly; and, in a great many cases, his claim was partly justified, by reason of the fact that we couldn't get competent steel men; although, in every case, before we attempted to employ them, we had our foreman check and place everything in the getting or placing, when he could disturb it, particularly, and he would get most of those changes.

223. Q. Well, were the faults corrected that you say in some cases were justified?

A. In every case.

224. Q. Now, what class of labor carried the steel from the place where it was unloaded on the reservation to the point where it was to be used in the various buildings?

A. Common labor carried the steel up to the building.

225. Q. Was that approved by Captain Feltham and Mr. Dodd?

A. That part of it was, that far.

312 226. Q. Now, under the contract, you were required to pay 45¢ an hour to common laborers?

A. Yes, sir.

227. Q. Now, your contract said that mechanics or skilled workmen, of all kinds, should have \$1.10 an hour?

A. Yes, sir.

228. Q. Now, these men who carried the steel up near the place where it was to be installed, did they undertake to lay it in the place where it was to remain?

A. No, sir. In no case.

229. Q. In no case?

A. No, sir.

230. Q. Now, you have had a great deal of experience in reinforced steel work in building?

A. I have been handling it for twenty-five or thirty years, that class of work.

231. Q. Was there an established custom in regard to the class of labor who would place the steel on the job?

A. Yes, sir; it is the established custom that the laborer will lay it in the immediate territory where it goes, not place it in position; but, for instance, beam steel are dropped right by the side of the beam, and may be dropped into the beam, and

313 then some skilled labor distributes it inside. It has been the custom in all of my experience, to lay, to tie in reinforcements, reinforced steel; but yet, right recently, the unions have claimed—oh, that is very recent—

232. Q. That is years after this work was done? *

A. Yes.

233. Q. They claim what?

A. The tying of steel is a skilled workman's job. That is of recent origin.

234. Q. Well, in connection with the reinforced steel, did Captain Feltham or Mr. Dodd recognize that there was any intermediate class of labor between 45¢ labor and the skilled \$1.10 labor?

A. They ruled that there was no intermediate labor for any class of work.

235. Q. And, if they weren't common labor, at 45¢, what were they?

A. They were \$1.10 mechanical labor, \$1.10 per hour.

By the COMMISSIONER:

236. Q. They ruled all labor, skilled or unskilled?

A. Skilled or unskilled, no intermediate grade, or any grade.

237. Q. Do I understand you to say that you were required to work on that basis?

A. Yes, sir.

314

By Mr. BALL:

238. Q. Now, did you make any appeal to the Veterans Administration, or the Government, in regard to that matter?

A. I did. A great many appeals to Captain Feltham, and presented our clause in our contract that referred to intermediate grades, and stated that we could not discriminate against this class of labor.

239. Q. With what result?

A. With the simple statement that it had been ruled by the Labor Department that it was skilled labor, and all must be skilled or unskilled.

240. Q. Do you recall whether you wrote him any letters on that subject, and got any replies thereto? If you don't, we will get that from another.

A. I am not certain of that.

By the COMMISSIONER:

241. Q. Let me ask you a question: You had gotten along very well with Captain Feltham on the job before this, up at Atlanta?

A. Yes, sir.

242. Q. You didn't get along so well, here?

A. Personally, I got along—even more, I liked him very much. I think he is a good friend of mine.

315 243. Q. Personally, you got along with him well up at Atlanta?

A. Both places.

244. Q. At Atlanta, you got along with him professionally, well, too, did you?

A. Yes, sir.

245. Q. Why didn't you on this job? What was the difference?

A. I have been trying to figure that out myself, ever since that occurrence. Mr. Dodd was between me and Captain Feltham at Roanoke, and at Roanoke Captain Feltham seemed to have a great deal more trouble with his head. He has a severe pain, quite often, from some wound that he has had in his head, and his arm caused him trouble.

246. Q. Was it—what I was trying to get at, was it possible that the difference in his attitude was attributable to some rulings from Washington, or superior authorities, differing from all the

rules that had existed when you were on the Atlanta job? Was it that?

A. No. I would like to—off the record, if it is proper to be off the record, I would like to state my real opinions—I tried to solve that, what has occurred to me. I went to Washington some, I know a great many, I will not say a great many, but on three or four occasions, and then I was in Washington alone, and Captain Feltham resents opposition, and he had opposition

316 in his own office, and if they ruled one way, and he thought the other way, I was the goat, between the fight.

In other words, the Brevet Major Clarke and he were bitter enemies, and that was true also of Mr. Price, who was the second man in the Department.

247. Q. In the Veterans' Bureau?

A. In the Veterans' Bureau at Washington, and for me to appeal to the Veterans' authority, who ran them, and had to get on to, was so much like—pouring oil on the fire.

248. Q. All right.

A. In a great many cases, after having this experience, I made strenuous efforts to handle this direct with him rather than appeal over his head, and then get the punishment that he could mete out, and Mr. Dodd seemed to be the man that could stir Captain Feltham up when he wasn't in the right frame of mind. On the other hand, when he came out feeling good, Captain Feltham was very fine, a very gentleman, and worked splendidly with me. But he would reverse those things when he got mad.

By Mr. BALL:

249. Q. When he got what?

A. When he got mad, after some charge by Mr. Dodd of some fault, or something.

The COMMISSIONER. This explanation is on the record, because I am calling all that out personally. I would like to know why, when they had gotten along so well, why it was that 317 could not get along at this time; but, if counsel on either side prefer to have that stricken, it will be; otherwise, it will remain in.

The WITNESS. As an example, could I say this?

Mr. BALL. We have no objection.

Mr. WATSON. I have no objection.

By the COMMISSIONER:

250. Q. What did you want to say?

A. When Mr. Price died in Washington, we happened to have a representative in Washington, and in a telephone conversation to him I told him of Mr. Price's death; he was the next man to

Colonel Tripp, and I immediately went by to tell Captain Feltham what I thought would be—(Balance of statement by witness objectionable, and excluded.)

By Mr. BALL:

251. Q. Is that all that he had to say with reference to the reinforcing steel labor on that occasion? Did you have any other talk with Captain Feltham or Mr. Dodd, in your steel reinforcing work, that caused any interference with that work?

A. Yes. They ruled that I must place my reinforcing steel ahead of the electrical work, which, in a certain sense, part of which is practicable; but they carried that out to the extent that the boxes and the sleeves and other things, would not be
318 located until my steel had been placed, which cost me a great deal of money, on the account of having to cut out beams, as referred to, where headers go, and he would go over the steel and measure and locate these boxes and install them, which should have been located in advance of my steel, and this would be requested at all times, and the captain ruled that he should not get that until my steel was in place. It was a very unusual ruling.

252. Q. I will ask you whether or not, or what is the best way, in building, on that point?

A. The mechanical men of the various branches come to the slab immediately after the form has commenced to take shape, where they can get about on them, and before the pans are placed, designate the points where the headers go in there, so as the headers can be formed before the form is placed, otherwise, we have got to remove what is called the pan to put the header in the pan with the head in the end of it at that point. Then we were required to bolt these steel pans in there in advance of what I am talking about, and the bolting itself is a most unusual procedure. In fact, I have never seen that done, nor have I ever
heard of it being done, before or since.

319 253. Q. I show you a kodak picture, and ask you whether that is a representation of the pans you are talking about?

A. That is the pans. There is the joints that had to be bolted, shown on that pan.

254. Q. You say you never heard of that being done before?

A. I never have.

255. Q. Was there anything in your contract or specifications that requires that?

A. No, sir.

256. Q. How many bolts did he require you to put in each one of those pans?

A. Always, three, and, sometimes, more; one in the center, and one in each side; sometimes, maybe more in the sides; but, always, three bolts.

257. Q. Was that very extensive?

A. Very extensive.

258. Q. Did that cover all of the slabs on the first floors of these various buildings?

A. It covered them on all the floors of all the buildings; except in No. 6 we didn't, it wasn't required that we do that; although the pans were then in very much worse order; they had been used throughout the life of the job.

320 259. Q. How did you have to put in those bolts? Those pans were steel, were they?

A. Yes, sir; they were steel.

260. Q. How did you get your holes in them?

A. Some places, we had to drill; some of them, we could match holes, that is, they are about the same place that we had to drill; most places we punched, and put a wood block in it—took a sharp steel punch and punched the holes.

261. Q. Those pans were about how long?

A. Those pans averaged about three feet.

262. Q. And how wide?

A. Well, they are, most of them, what is known as twenty inches wide—it wasn't twenty-five inch diameter, twenty-five from center to center, that is about twenty inches wide.

263. Q. Where did the steel rods go with reference to the pan, in the picture I am showing you, which I will introduce in evidence?

A. The reinforced steel was in between the pans, running the long way, with the pans, and the reinforcing temperature steel ran across the pans, on top.

264. Q. Now, then, where did your temperature rod go?

A. It went across the pans at intervals.

321 265. Q. Up at the top?

A. On top of the pans. Yes, sir; rows on each side of the pans.

266. Q. Now, did rods come out the ends of the pans, here, at that dark space?

A. That dark space through there was a beam; that did have a beam reinforced some four to six bars.

267. Q. Now, how extensive was that requirement about putting in these bolts?

The COMMISSIONER. I think he said on all floors except in one building.

By Mr. BALL:

268. Q. Only in the first building?

A. No; on all the floors; yes, sir.

269. Q. You had steel pans on all the floors?

A. Yes, sir; that is, in concrete portions; there is some sections built that had flat slab in small areas, not complete.

270. Q. What effect did that have on your progress?

A. Well, it was a considerable delay, and cost, too, to install these bolts, and then, in regard to getting them out, it was extremely difficult, because the pans would not turn loose, bolted together, we had to go up in there and get those bolts, cut them loose, and get the pans out, because the pans were fixed between fixed points.

322 271. Q. How were those pans supported from below?

A. Well, they are supported—there is a wood joist made under that later beam between those, and then strips on that, and then immediate strips across where this pan crosses over the three, one- by two-inch wood strips, standing over the wood joists, that is directly under the concrete which is between the pans.

272. Q. Have you discussed with Mr. Clarke, Mr. John T. Clarke, the extent of these boltings that you had to do, and the possible loss of time and cost, and so forth?

A. I described to him the equipment and the operation we had to perform on that, but I don't know how fully I went into it with him.

273. Q. You have no records of the cost?

A. No, sir; I don't.

274. Q. To put in those bolts, the lost time?

A. No, sir; I don't; I went into the whole thing, and described to him the operation we had to go through with. That has been a good while ago, and I don't remember parts of that.

275. Q. You recognize this kodak?

A. Yes, sir.

323 Mr. BALL. I offer this, now, as Plaintiff's Exhibit No. 29.

Mr. WATSON. Did this witness take this picture?

Mr. BALL. It is only typical; no.

By the COMMISSIONER:

276. Q. Well, is it a correct reproduction of the conditions there?

A. That is a correct reproduction of the work, of our work, of my work.

277. Q. That is what I am asking. It serves to explain the construction?

A. The idea works the same, and almost identical with that, if not identical.

By Mr. BALL:

278. Q. Now, after the Virginia Engineering Company got there, in charge of the Redmon work, did they have dealings with those pans, there?

A. Yes, sir; ever since.

279. Q. Now, did you use the same pans that you did, or that you had prior to their coming?

A. Yes, sir.

280. Q. After Redmon was away, and the Virginia Engineering Company took charge, did they require any more bolts?

A. He said they didn't need them.

281. Q. Were your pans in as good condition as when they required bolts to be put in?

324. A. They was in very much worse condition—they had been used throughout the life of the job.

282. Q. All those pans belonged to Mr. Blair?

A. No. They were pans rented from steel people. I don't recall the particular steel people that furnished them.

283. Q. Is that the custom of the trade?

A. Yes, sir.

284. Q. And these steel pans are rented, and are passed along from one place to the other for use?

A. Yes, sir.

285. Q. And, after the slab of concrete is poured from them, then they are removed and taken to some other place?

A. Yes, sir.

286. Q. Well, in your judgment as a builder, and from your experience, was it necessary or proper for you to bolt those pans?

A. No, sir; it isn't customary or justified, and, in my opinion, it adds nothing to the value of this form work.

287. Q. Do you know any reason why you were required to do that unusual work, which you say was of no advantage?

A. It was very evident, that it was to find me something to do, until the mechanical work could be placed. It was, well, it wasn't in that many words, but that was an attempt

325 to find something for me to do that would delay the pans, and so they made us bolt the pans until that took place—until the sleeves and electric boxes were placed.

288. Q. Do you mean to say that it is your judgment that the Government representatives went deliberately about to give you an improper burden in order to delay you, and in order that Redmon might not be made responsible for the delay? Is that what you mean?

A. That is my candid opinion.

The COMMISSIONER. He very nearly did say it.

A. That is by candid opinion.

289. Q. Let me ask a question before we get to 1:00 o'clock: Captain Feltham and Mr. Dodd, in this whole Redmon transaction, or matter, did they seek to justify the delay, or agree that it was unreasonable?

A. At time; they worked both ways. At times, they discussed it, that if was Redmon, that they didn't know what they were going to do about it; and the next day they defended the delay; and that I couldn't understand, and I have never been able to understand it.

By Mr. BALL:

290. Q. Well, you don't mean to intimate that it was any possible connection between them and the Redmon Heating Company that caused them to favor the Redmon Heating Company, do you?

A. By all means; no.

326 291. Q. You don't know of any motive or cause for the conduct that you say appeared to you to be for the purpose of delaying you in order to let them make good?

A. It looked to me like they didn't want to tell me, "You can't pour on account of that particular feature," and they wouldn't tell me I couldn't pour on account of the mechanical work, but they had to find something else to try to delay, and to find something else that we might do.

292. Q. You say, in the light of your experience and of your knowledge of the trade, to the best of your ability, that it was improper to require you to do the things which caused you delay in your pouring?

A. I do.

293. Q. Now, about the sleeves you mentioned, about how many sleeves would there be to the floor slab in these various buildings? They were, of course, different in the size of the buildings, I suppose?

A. Well, that would be a, more or less, a guess; on the large buildings, Building No. 2, all the sleeves in them, there must have been two hundred and fifty to three hundred, in the floor slab of Building No. 2.

294. Q. Well, the main thing—

327 A. The others in proportion. I would say the other buildings; possibly half that many. I would have to count them. I could count them. I could check the plan and count the sleeves in the large building.

295. Q. What I really wanted to ask you is whether the question of the sleeves was a minor or a major matter in the progress of your work?

296. Q. And if you take Building No. 2, or take this west wing, could you just make a guess as to how many sleeves there would be there, in each of these floors—and when you say “floor slab,” you mean the same thing as a concrete floor?

A. Yes, sir. Oh, evidently there is a hundred and fifty in the west wing, there.

297. Q. That would make approximately—

A. Four hundred and fifty, I would estimate; that is an estimate—it takes two to every radiator; it takes three for every plumbing fixture; it takes—no matter what kind of a fixture, it takes conduits, which are to pass through everything that passes through the floor requires a sleeve, and there is a great many of those in the hospital building.

298. Q. A sleeve, that is just a hole, or pipe?

328 A. A hole for a pipe.

299. Q. In which there are certain pipes go to carry steam, or whatever it may be?

A. That's right.

300. Q. Whose duty was it to locate these sleeves?

A. The Redmon Heating Company, to locate them.

301. Q. And you could not pour your slab until they located those sleeves?

A. I could not; because, in the first place, it would be impracticable to drill for those sleeves, and the Government would require this of any place that Captain Feltham required them to be checked by them.

302. Q. What did the specifications call for, or did it call
329 for the location of these sleeves before you pour the slabs?

A. The specifications stated that Redmon Plumbing & Heating Company would locate them, and Algernon Blair's forces would install them and keep them in position while pouring the slabs.

303. Q. Is there any provision that prevented you from going immediately on and pouring the slab, and after that drilling a hole for the sleeves?

A. No, sir.

304. Q. How big were the holes for this slab in building No. 2?

A. Average five inches, down to an inch and a half.

305. Q. If you had a five-inch hole for a five-inch sleeve, and you had to pour your slab, you mean you would have to drill and take out a hole five inches in diameter?

A. If there had to be a sleeve, we would have had to cut one big enough for a four- or five-inch stack to go through.

306. Q. Now, according to the universal custom in building in reference to sleeves, is the slab held up until the sleeves are placed?

A. Yes, sir.

307. Q. In how many of these buildings were sleeves required, and were they in approximately the proportion you have indicated in Building No. 2?

330 The COMMISSIONER. He has already said some have less.

A. Yes—there is no sleeves required in the buildings in the powerhouse group, that interfered. I don't think there is another building but what sleeves are required, except the two officers' quarters and powerhouse buildings.

By Mr. BALL:

308. Q. Did you have a controversy with anybody in regard to whose duty it was to locate and place these sleeves?

A. Some two or three times.

309. Q. With whom?

A. With Captain Feltham and with Mr. Johnson, who was the mechanical inspector, and with Mr. White.

310. Q. What was the outcome of your controversies?

A. The immediate outcome was a tremendous delay, particularly to get either one of them to agree to anything, and they finally agreed that they would mark them off, and required that I put a center down each slab, and down each wing of the slab, for them to locate them from.

311. Q. Well, was that your duty?

A. No.

312. Q. It wasn't? Whose duty was it?

A. It was their duty.

331 313. Q. Who required you to do that?

A. Captain Feltham.

314. Q. He required you to do that in every building, in every room?

A. In every wing and in every building, that is, the center of where the building had two wings, there would be one down each wing, and a center from the main part.

315. Q. I will ask you if he required that by letter?

A. Verbally.

319. Q. Did you have any complaints from Captain Feltham about the field office that you build for him?

A. Yes.

320. Q. What was the trouble, if any?

A. Well, he complained about the fact that he said it wasn't tight enough, for one thing. And I had arranged to panel the walls with paper—which I didn't object to that complaint, though it was nothing serious, he complained that the floors were not right—he complained generally about it.

321. Q. Well, you did everything he wanted done to satisfy him?

A. Yes, sir.

322. Q. There was some complaint shown in the correspondence about your destroying trees or shrubbery. I wish
332 you would explain that.

A. In running the various lines with our engineer, it was necessary to run through fields and bushes, and he had to put it with reference to stakes, and he did, I suppose, cut some trees in certain areas to locate his lines, and we severely criticised and taken to task on that.

323. Q. Was that a violation of your contract, in anyway?

A. No, sir. The trees where the lines had to pass were required to be removed, under our contract, and that point excavated for a different elevation.

324. Q. Was it merely a matter of using it before you were ready for construction, and was there any damage and if damaged at all was much of it torn down or broken down?

A. No, sir.

325. Q. You had the complaint—did you inspect it to find out whether it was well founded?

A. Yes, sir. I made careful inspection, and did at the time have a photograph made. I haven't seen that photograph, however, since then.

326. Q. What about the Parrott House? Was there damage, or what happened where he claimed there was damage? What was done?

A. I disremember. At the Parrott House, I made a written report, and I am sure I had some pictures made of it.

333 327. Q. Well, now, was there a road, alongside of the Parrott House, running from the highway?

A. Here's the road [looking at picture—photo].

328. Q. It is No. 9?

A. Yes, sir; it shows right here, there was a road on there—
The COMMISSIONER. "Right here," by that you mean the lower corner; right hand?

A. In the right-hand lower corner, there is the road, showing it, that is from the Roanoke-Salem Road, up to and around the Parrott House, and also extended off up into the barn lot, which was a gravel road, and, under our contracts, this road had to be removed, and the area adjacent thereto had to be excavated, and then take possession back of the road for a lawn.

By Mr. BALL:

329. Q. Well, did you have the right to use that road, under your contract and specifications?

A. There is no question but what we did have the right, and he was hot when I went to take my equipment down there.

330. Q. Did he order you to discontinue the use of that road?

A. He did.

331. Q. Was there any reason for it, or foundation for it?

A. We were never able to find any reason for it, except
334 that he said that we destroyed the shrubbery adjacent to the road.

332. Q. Was he living in that house at the time?

A. Yes, sir.

333. Q. He and who else, if anybody?

A. He and Mr. Dodd were living there.

334. Q. And were using the Parrott House?

A. Yes, sir.

335. Q. Did he make any complaint, and how much, at first, about these things?

A. He complained about it, at first, some few times.

336. Q. You did abandon the road, on his order?

A. Yes, sir.

337. Q. He insisted that you didn't have to have a road to get to your facilities, back there?

A. We built a temporary road over ditches and through there, over there, for that dirt.

338. Q. Further to the East?

A. Further to the East, around by that platform and concrete plant, which was immediately back of the building, the largest building, designated with the R, in the center, right hand, of this building.

338. Q. The building area was how far away from that 18?

335 A. This is 18. Possibly two hundred feet from Building 18.

339. Q. That cost you some money, and any inconvenience or delay?

A. Considerable inconvenience, and, of course, money would be involved in the inconvenience, getting material over it rather than over a well-graded gravel road.

340. Q. What time of the year did he make that complaint at first?

A. I am not able to say, but it must have been—there are records to show—there is a letter on that.

341. Q. Yes, it will get in.

A. It appears to me that it was in August—I am not certain.

342. Q. I show you photograph which, in the upper right-hand corner says Parrott House, back view, 3/3/34, and ask you

if that is a correct reproduction of that Parrott House, just like on the blueprint here?

A. Yes.

343. Q. No mark Parrott House on the blueprint?

A. That is showing the rear elevation, together with the road on each side, with the posts that I built to protect it, there.

344. Q. Was that taken in the Spring of 1934, about the date that it shown to have been taken?

A. Yes, sir.

336 By Mr. WATSON:

345. Q. Did you make that?

A. No. That is, I had our photographer—we had a job photographer to make, to take all photographs.

Mr. BALL. We offer this (Parrott House) as Plaintiff's Exhibit 30 (marked).

349. Q. Now, did you have any trouble about using the water at the swimming pool?

A. Yes, sir; he immediately objected to me using the tanks and further water facilities that were on the farm.

By Mr. WATSON:

350. Q. Who made those objections?

A. Mr. Dodd and Captain Feltham.

By Mr. BALL:

351. Q. Was there anything in the contract or specifications which forbade you to do that?

A. No, sir.

352. Q. In the correspondence there is something, complaint about the brick; something to the effect that 25 percent were not according to samples, which had been presented; was that corrected, or not?

A. It wasn't corrected—it was rejected, though; about three or four days before he agreed he was wrong and went ahead with it.

353. Q. Now, did you have frequent complaints, or any complaints, about your concrete being honeycombed and not sufficiently tamped?

337 A. Yes; we had complaints.

354. Q. What was there in those complaints?

A. The majority of them was slight. What appeared to be honeycomb was the effect on concrete where you could see stone, or other slight honeycomb, from time to time, and what I mean by "honeycomb" is some depressions in the concrete, where you could see into it.

355. Q. Were those complaints justified by the conditions?

A. Well, I would have to elaborate on that.

By the COMMISSIONER:

356. Q. What did you do? Repair it?

A. Yes, sir.

357. Q. Did you take out the loose part and fill in, or what?

A. Yes, sir.

By Mr. BALL:

358. Q. Were there many of them?

A. No. It was a very practical average, or above the average of good concrete work. We had the very harshest grade of concrete material to use in that job, crushed limestone, and it was almost, well, it just was over the line of being workable concrete, in fact, we had great difficulty in getting a mix that would meet the specifications and be workable out of the local materials.

359. Q. Well, I will ask you, under ordinary circumstances would that concrete have been acceptable on a job of that sort?

338 A. Yes, sir.

By the COMMISSIONER:

360. Q. Well, you always have more or less honeycomb in a cement job?

A. Yes, sir.

361. Q. When you prepared the batch, would it have his approval?

A. He would not permit us to repair it. He had taken pictures and mailed them to Washington, and commented on it; and these were repaired—repaired part immediately.

362. Q. After you repaired it, did he approve it?

A. Oh, yes.

363. Q. What was the attitude of Captain Feltham and Mr. Dodd with reference to certain long and frequent reports to Washington, or any letter of criticism, on their part?

A. It was almost a daily occurrence, some days just stacked up, some days ordinary things, what they termed a violation of our contract.

364. Q. You mean, they turned in a separate report, or a daily report and separate letters, also?

A. Yes.

By Mr. BALL:

365. Did you have some experience in regard to some columns which were said to be off center?

A. I had some piers in Building 14, small concrete piers in one end of Building 14, I believe, off-center columns.

339 366. Q. Well, what was the condition there?

A. Well the condition was that in one, only one room of a building, where we had little step piers come up to support two lines of beams, with the proper solid construction, and in building those piers, we had two engineers; well, now, at one end, one of the engineers was off, and did not remove his stake, and one stake was off two inches, practically the center of that building, in building two forms. There was one engineer on one, and one on the other, and at the other end, they tamped the columns down the last, and they exaggerated how they were, from the perfect end towards the other end, and it made the two columns two inches off.

367. Q. Two inches off center?

A. Yes, sir.

368. Q. That would have been the removal of one inch the right way would have put it to center.

A. Yes, sir.

369. Q. Had you put your reinforcing steel in there?

A. Yes, sir.

370. Q. You had?

A. Yes, sir; we had it ready to pour when they discovered it.

371. Q. You had your wooden forms up?

A. And the steel in place.

340 372. Q. What did they require? What did they propose?

A. I proposed to increase the size of the beam and the columns supporting that beam, where it would be in line, but just a larger beam, and I proposed, also, to just—I made two or three different proposals; one was that I make the column sufficient size to balance the right column over to carry the beam at the right place, and he required me to cut out the forms and steel, and take up the footings, even though I had to remove all the forms to do that, and, hence, to pour the footings over.

373. Q. Just to remove the matter of one inch one way? Is that it?

A. Yes, sir.

374. Q. Approximately, what did it cost to do that?

A. Well, there is so many things involved in it, I would say that it cost me up toward fifty and a hundred dollars.

By the COMMISSIONER:

375. Do you think, under the contract, he was warranted in requiring any such a measure of being in line?

A. I don't think, under any circumstances, that any engineer would require it; but they would have suggested one of the solutions I did, or made some other solution, as suggested by me, under good, strict inspection. That has been my experience.

341

By Mr. BALL:

376. Q. Well, were those columns so that they would be exposed to observation after the building was up?

A. No. They were underneath the store room of the building where we had to crawl through a hole, and crawl back a long ways, and then have to have a light with you.

377. Q. Was the load-bearing strength reduced by that?

A. No sir.

378. Q. Well, you took the position that was an unjust requirement, and yet you complied?

A. Yes.

379. Q. Now, did you have some experience with a number of columns in Building No. 2?

A. Yes; I don't know the exact number. I had to cut out sections of possibly eight or ten, I don't remember the exact number, and repour them.

380. Q. Why?

A. From what he termed unusual honeycombed concrete.

381. Q. Do you think it was justified?

A. Well, I would say no; yet there were one or two of those columns that it might have been good inspection, that he might have asked me to take out a section of them. Nothing unusual, though, about it.

382. Q. Now, you had some complaint about hollow-tiling
342 one building. Some load-bearing hollow tile. Do you remember about that? Well, if you don't, probably we will get it.

A. I don't think I remember that.

383. Q. Do you know anything about the proper way of laying facing brick on a building? Is there a method called the "overhand"?

A. Yes, sir; what we call "overhand."

384. Q. What is overend?

A. That isn't the word I want. I don't know what the right term is. That is the word that is used, "overhand," where the workmen stand on the rough side of the wall.

385. Q. Inside of the building?

A. Inside of the building, laying overhand. Our work throughout the South is laid that way, except in some unusual cases, in sky scrapers, in the higher class of buildings, where they start on one or more levels, they use their—

386. Q. That is where they have steel framework?

A. Yes, sir; that is where they simply fill in.

387. Q. With these facing brick?

A. Yes, sir.

388. Q. In laying them overhand, as you call it, the mason remains inside the building and works up towards the ceiling
343 on a short scaffold with boards on the inside?

A. He stands on the slab and works till he gets scaffold-high.

389. Q. Now, when he gets done with one floor, that way, then what does he do?

A. He moves to the floor above.

390. Q. Does he use the same scaffold?

A. Travels with the scaffold to the next floor.

391. Q. On up?

A. Yes, sir; starts on the slab, and works on the scaffold when he gets higher again.

392. Q. This scaffold can be used continuously? On other jobs?

A. Yes, sir.

393. Q. Did Captain Feltham give you orders to have brick laid in another way? Did he order you to build scaffolds on the outside to lay the brick?

A. No; he never did give me an order to do that. He told me if I didn't do that he would make me wish I had; that I couldn't lay those brick to suit him unless I did have a scaffold out there.

394. Q. Well, were you—your masons—laying those bricks, at the time he told you that?

A. Yes, sir.

395. Q. Were they laid in compliance with the specifications?

344 A. They were.

396. Q. And do you know why he ordered you, or requested you, under that condition that you laid the brick from scaffolds on the outside of the building?

A. No, sir; I don't know why.

By the COMMISSIONER:

397. Q. Did he assign any reason why it would be preferable?

A. He said I could not lay them otherwise and suit him.

By Mr. BALL:

398. Q. So you did go on and put up scaffolds?

A. I did; yes, sir. And if it is permissible, I would like to explain how he proceeded along that line.

399. Q. Well, explain it.

A. We used a modification of the old hand-made brick, of the old Salem brick, some of the brick that were made so that they varied in size considerably, and in shape, they looked squashed in, what I would call scooted down; in fact, made a brick imitation, and an extremely bad brick, I mean a bad shaped brick, and

he required that Flemish bond to be laid so that the header must come directly under the center of the window in every case, and, at the same time make the window jambs become symmetrical, which is correct brick work, but he measured on the first two build-
345 ings; until I had built a scaffold, and if one was off to centering the one immediately under it as much as the sixteenth of an inch, I had to move that brick; therefore, that increased the size of the mortar joints a great deal, in some cases, to make it center directly over the one below, and he would not allow any tolerance, whatever, until I built scaffolds to suit him.

400. Q. In your opinion, was that justified, according to the general usage in brick laying at that time?

A. Never in my experience had I seen before or since that time, anything similar to that.

401. Q. Let me see if I am correct. Do you say that he notified you that he would not approve the brick work, unless they were laid from a scaffold?

A. He didn't say that. He was very plain, and he had told me more than once, that he would make me wish I had built scaffolding.

402. Q. Who suggested the scaffolds on the outside?

A. Captain Feltham, himself, to me.

403. Q. What did he say to you to start that about building with scaffolds?

A. He discussed it with the brick foreman, first.

404. Q. Who was that?

A. Mr. Phipps, I think he spells it P-h-i-p-p-s, under a Mr. Albert, superintendent—I can't call his name right off—
346 Ganse. He discussed it with them, and then he came to me with it, and, of course, I immediately went to see him, Capt. Feltham about it, and talked with him several times about it.

405. Q. Well, what was the substance of the conversation?

A. That I couldn't lay the brick satisfactorily without scaffolding.

406. Q. Did you say to him that the contract did not require you to lay them that way, and that he had no authority to tell you how to lay your brick?

A. I told him that, and both my brick superintendents, and my brick foreman, informed him that the men served their trade laying brick that way, and that they could lay them satisfactorily from the inside.

407. Q. Handover?

A. They could lay the brick from the inside.

408. Q. Overhand?

A. Yes, sir.

409. Q. And he would not accept that?

A. He would not.

410. Q. And, after that statement, you proceeded to have scaffolds built around that building, or these buildings, and to lay brick accordingly?

A. Yes, sir.

411. Q. Now, I show you one picture here, one of the photographs here, which is the main building, which bears, at 347 the upper right-hand corner, "2, 9-29-34, Main"—which I will offer in a moment—I will ask you if that is a correct photograph of the appearance of the main building, with the scaffolding erected?

A. Yes, sir.

412. Q. From which those brick had to be laid under those conditions?

A. Yes; that's right.

413. Q. And that scaffolding goes entirely around the building?

A. Yes, sir.

414. Q. Do you know how many buildings the scaffolding was placed on for that purpose?

A. I am pretty sure I built it on all buildings, without it was the two residential buildings.

415. Q. How about your service group?

Mr. WATSON. Are you introducing that (photograph showing the scaffolds).

Mr. BALL. As soon as he finishes his answer, I will.

A. I am not certain about the service group.

416. Q. Did you report to the home office the buildings you did put the scaffolding on?

A. Yes, sir. Yes, sir; I reported, and where it was.

Mr. BALL. I will offer it now, this photograph.

348 The COMMISSIONER. Plaintiff's Exhibit 31 (marked).

Mr. BALL. Now, I want to get that in the record there before you get to an argument of it.

417. Q. I want you to explain the difference in the operation of laying brick, from the scaffolding and from the inside, and which is preferable, and what are the objections to the scaffold brick laying, just about what you said a minute ago, I want to get it in the record.

A. The laying cost is considerably in advance to the scaffolding, because you have to wait on two locations, you have to have brick and mortar both outside and inside, and the mason, to work out there, has to climb back in and out, in a great many cases, to be building, back up, his walls.

418. Q. You mean, he would lay up his face wall a certain distance, and then he must climb over?

A. In a great many cases. Sometimes, you can scatter your masons enough outside the buildings, but, in a great many cases, he has to pass in and out to back up his work.

419. Q. And the material has to be—

A. Piled at the windows, or some way, to get to the outside.

420. Q. On this exhibit 31, just at the right of the picture, the center of that building from the elevation, what is that?

A. That door? That is a door to pass the material up.

421. Q. An elevator, is that what it is?

349 A. Yes, sir; a material elevator, that elevates the material—it is rolled into the building, and carried all around to all locations.

422. Q. How many of these elevators did you have to have to a building of that size?

A. We had a double elevator on that building.

423. Q. When you got your material and brought it up here, at this point, how did you get your material to this wing over at the left?

A. Rolled it around there on the slab, to that point, and passed it out the window to the workmen on the outside.

424. Q. Well, now—so it was all the way around the building?

A. All the way around. If it had been only inside scaffolding, the material would have been removed from the wheelbarrow to the inside scaffold, but with outside scaffolding it had to be passed over the inside scaffold and through the window space to the outside scaffold and moved to where it was to be used.

425. Q. Then, you say, laying from the inside, overhand, as we call it now, how would that material get up to the job?

A. It would get up the same way, and be deposited on the boards on the inside of the building, and on the scaffolding the brick would be stacked at the mason, and the mortar on the boards, directly out of the wheelbarrow.

350 426. Q. Now, then, when the material came up, the mortar and brick came up, on that elevator from floor to floor, and some distance from the point where it was to be used, was it transported in any wheelbarrows along the boards?

A. It was put at the nearest window to pass out, and then it was taken in a basket and passed out and deposited on boards on that exterior scaffold.

427. Q. Now, this scaffold, was it all built to the top at one time, or was it put up as you had occasion to use it?

A. I think we built that, possibly a day or two days ahead.

428. Q. A day or two days—

A. I just followed the masons in extending the scaffolding up.

429. Q. Now, taking into consideration all of the elements of the two methods in laying brick, and without the cost of the scaffolding on the outside, what would be the difference between the cost of laying the brick from the outside and the cost of laying it from the inside? How much, actually, one way or the other, if you know, would it cost?

A. At least twenty-five percent more, I think. I have not figured what it would be in dollars and cents. The labor
351 involved in waiting, and a great many other things, would increase your cost. I haven't tried to change it over into dollars and cents.

430. Q. You think it cost twenty-five percent more?

A. I don't think there is any question about it.

431. Q. On the outside than from the inside?

A. Yes, sir. Well, it isn't only laying it on the outside. You are compelled to lay part of your work from the inside—inside and outside—you have to lay it from both sides, in that case.

432. Q. If the brick laying cost forty dollars a thousand—and this for illustration—would you say that it cost ten dollars a thousand more to lay brick that way than from the inside?

A. Easily that difference.

433. Q. Then you do say, unconditionally, that it did cost as much as ten dollars per thousand more to lay the brick that way than inside?

A. Ten dollars per thousand more—easily ten dollars more per thousand.

434. Q. Besides the cost of the scaffolding, itself?

A. Yes.

435. Q. Now, could you, after you had finished one building, tear down this scaffolding and use it on any other buildings other than the buildings it was originally used on?

352 A. Not to much advantage, because we carried the buildings on practically at the same time, that changing might have given us some advantage, but very little, because, in moving the scaffolding from one location to another, we get to the last building, which was number five, I believe, or number six, that possibly some of the scaffolds from a minor part of the building on No. 6. I am not certain about that, but I think we did.

436. Q. You have no data from which you could tell us how much lumber, nails, and so forth, and how much labor was involved in the erection of those outside scaffolds?

A. No.

437. Q. Has the office the information on which they can base a calculation?

A. Yes, sir. We have to make daily cost sheets. We show a complete report of it.

438. Q. Now, in your opinion, then, when that scaffolding was torn away, was the lumber worth as much as it cost you to put it up there?

A. No.

439. Q. You couldn't get salvage on it?

A. It was of very little—just average value.

353 440. Q. Very little salvage?

A. Very little salvage value to it.

By the COMMISSIONER:

441. Q. What would you say about breaking it up and using it for some other purpose on some other building?

A. If we had any other, it would have been all right on that.

442. Q. On other contracts, six months afterwards?

A. Well, it would have been too expensive to remove the nails and it gets broken up in removing it, tearing it down, until it would have been just worth very little money. When you move second-handed lumber of that kind, you would be fortunate if you came out on it.

443. Q. If you had had a building on which you would have had to build scaffolds near Roanoke?

A. No, sir.

444. Q. Have you ever had a building on which you had to build scaffolds that way, as here at the Roanoke job?

A. No, sir.

445. Q. Did you ever have one before?

A. Never had one, I don't think *think*, or I didn't build scaffolding like that, but I would suspend scaffolds on the wall of the building at times, a few times.

354 446. Q. Now, in building from the inside, overhand manner, would you have to have some scaffold in connection with the cornice and spandrels, which you would support out of the upper windows, and so on?

A. Yes; we would have had some cornice scaffold, which we use to brick at the window, for the cornice and gable work.

447. Q. About what percentage of the total cost of the scaffold would be covered by the cornice scaffold that you speak about—if you can, give some percentage of it?

A. Oh, it might be ten percent.

448. Q. You have had experience, I believe you said at the very outset, in the carpenter work; about how much?

A. I served my trade as a carpenter.

449. Q. If you are doing a job from the inside, can a person reach over, to what I would call the trim?

A. Yes.

450. Q. Could they lay it as evenly on the outside, from the inside, as from the outside work, on the face of the building?

A. This building we are in was built that way, and I think it is a high-class job. It is the very way the men served their trade—that way—and it is the way they got at it; yes, sir.

355

By Mr. BALL:

451. Q. Will you explain to the Commissioner why the mason can get more accuracy from the inside than he can from the outside?

The COMMISSIONER. Tell me about his backing up all that stuff, he could do better; he was just telling me about the face brick.

A. Well, it puts him in a position to throw his eye immediately down the joints, in pointing it is very helpful, in the matter of pointing, and it prevents him from having to use the plumb line except at intervals, because his eye is directly—it just places his eye there when he is along the brick, immediately—they are looking down—and when he is standing out in front, he is compelled to reach for his plumb rod, I would say, about fifty percent more than he would if he is sighting directly over the joint, the joint, and from center to center.

By Mr. BALL:

452. Q. See if I understand you correctly to say that in this southern country, and in that around up there, the outside scaffold method was not used?

A. For that class of building.

453. Q. Yes; all right. Now, you said a moment ago, I think, something about the header being at the middle of the windows—on the something about the windows—how the brick should be around that particular window. Were you required on
356 this job by Captain Feltham and Mr. Dodd to go further than that in the matter of symmetry in bricklaying?

A. Yes; he carried it to the nth degree. For instance, we will say we had windows on each side, The eighth, window over there, with an eighth window over here, they had to be exactly alike.

454. Q. You mean, the brick work?

A. Starting from the center of the building.

455. Q. You mean the bonding had to be exactly alike?

A. Yes, sir; and if it is directly in the center of the window when it throwed to header or stretcher, as the case might be, and he required it to be a header, I believe, and, in every particular, this window over here had to compare exactly like the one over yonder, whether they are the window to the right or the window to the left.

The COMMISSIONER. I should think, if there were nine, it would fix the eighth as a center?

A. The eighth over here—further out, it ought to be—I don't know.

456. Q. How about the ninth?

A. It had to be like the ninth, on the other side.

By Mr. BALL:

457. Q. Was that true, if he had two wings, that were two or three hundred feet apart, on the front?

A. He used the central line of each elevation as a working central point; if it was a wing elevation, he used the center of that wing, and it must be symmetrical on the center line over there, from there, regardless of how practical or impracticable that would be, we had to find a way; which is what made it necessary for Mr. Kranert to work out full-sized bonding details, and lay it out on the wall, before we could start up with the brick.

The COMMISSIONER. I judge you think he was very (highly) educated on symmetry?

A. I certainly did.

By Mr. BALL:

458. Q. Under your instructions and specifications, were you bound to do it, or was he right in the requirement?

A. No.

459. Q. Now, I show you—I may or may not introduce it—but I will show you the front of the main building, which is number two, and you will observe that there is a wing, the wing at the left, with three windows, on the first, second and third floors, and in the middle, of course, there is one window. Now, did he require, if you had a header on the center line of the center window of this right wing, that the center of the window over here, the left center—

A. Over here, there had to be a header there.

460. Q. The distance there is what? Two or three hundred feet?

A. Some three hundred feet; I don't remember the dimensions, exactly.

358 461. Q. Could a person, by observation, note that, if you didn't put it that way?

A. I don't think he could remember it from the time he would look from over here to over yonder—he couldn't see them both—the time you looked that far, you couldn't tell what it was.

462. Q. Could those successfully be made so symmetrical with the eye or instruments, something like that?

A. Yes.

463. Would that add anything to the beauty of the building, or the appearance?

A. To a certain extent; yes. Symmetry of bondings is important to brick work. That is, that the jambs of windows on each side, the bonding ought to be the same on any opening but that don't necessitate the one next to it being the same, because brick grade to one general thing, and that is the best practice. The practical brick work does not require two windows set opposite to be alike, but each must be symmetrical, about the same bonding on each side, on each side of the opening to be good brick work.

464. Q. Were the bricks used in these buildings so accurate in their dimensions, a stretcher eight inches, and a header exactly four inches, so that they could work that out without some variation in the mortar joint, or by trimming the brick, or something of that kind?

359 A. No. There was a considerable variation in the size of the brick, the size and width of these brick.

465. Q. Do you understand that, in laying out a building of that sort, it is so designed that they can, in advance, tell how many brick are going in the front wing, like that, and how they should be laid, or does it depend upon—

A. Let me get that question again.

466. Q. I say, in laying out the building, do you understand that they make their calculations in such a way for the size of the front of that building, if the brick should be laid with the headers under the stretchers, for the Flemish bond, as you say, you will be able to determine the number of brick it will require—

A. Without question, our office—now, wait a minute, I don't get that question. Without cutting the brick, you mean?

467. Q. We will put it another way, if you will strike that out. We will get it a little more simple. I want to know whether an architect in planning that would not figure out just exactly how many brick would go in there as headers and stretchers?

A. I would know exactly in this case. It was laid out, and we went in to make the bond, come to the windows, though, there was enough variation in the brick that we had to change and move the windows slightly, to make them consider the bond, which is always true in good architecture, and that was carried out pretty well.

360 468. Q. Do you know anything in the specifications or contract that indicated that you must have the two wings exactly alike, with reference to the bond?

A. No, sir.

Mr. BALL. Now, I will introduce this photograph, it is taken as of November 30, 1934, which approaches the completion of the job. [Photo shown to Mr. Watson.]

469. Q. Now, Mr. Roberts on Building 17, which is the nurses' building, which I am going to introduce, and may as well introduce it now and have it marked—

The COMMISSIONER. The other one is 32, this is 33. Plaintiff's Exhibit No. 33 (both 32 and 33 marked).

Mr. BALL. I would like for the Court to see the building, but I can't do better than this.

470. Q. Now, I will ask you, did you have any trouble about the bonding in this building? Were you ordered to tear that down, and then did they compromise by having you to lay it out in a diagram for the rest of the brick work on that building?

A. Yes, sir; that is the principal reason why Mr. Kranert laid out the full size detail. There was some, I don't know exactly what it was, there was a considerable discussion I can't recall.

471. Q. Wasn't it based on this symmetry of brick?

A. Yes; it was based on the symmetry of this building, but wasn't carried out systematically.

361 472. Q. After it was built up, although they had ample opportunity to observe—or sooner, if they had inspected it promptly—they ordered that the wall be torn down?

A. Yes, sir.

473. Q. And then, on an appeal to Captain Feltham, or who it was, they compromised by having Mr. Kranert lay out on paper exactly the location of the different brick for the first two courses, which the mason, of course, could follow upward from that point?

A. Yes.

By Mr. WATSON:

474. Q. Which is the front?

Mr. BALL. This is the front [showing photo].

475. Q. Well, did you do that to the whole building?

A. Yes, we bonded them up to—over the whole building, in the front wall, and columns, in that whole building.

By the COMMISSIONER:

476. Q. Did you tear it out?

A. No, sir.

By Mr. BALL:

477. Q. They ordered it done, and then compromised, and you went on and laid the brick?

A. Yes, sir.

478. Q. Exactly the way, the same way you would have done without the diagram?

A. Yes, sir.

479. Q. That is a fact, is it?

362 A. Yes, sir. Any competent brick layer or brick foreman can lay out the bonds without following a diagram on the entire job.

Mr. BALL. Let's see; that was 33?

The COMMISSIONER. Yes.

480. Q. Did you have that experience in other buildings?

A. The worst experience I had was on the Building No. 7. I had considerable bonding difficulty with them.

481. Q. What difficulty did you have on 7?

A. On slight variations, as close as a header not being directly over a stretcher.

482. Q. [Showing picture.] Well, now this—

A. That is the back of No. 7.

483. Q. The colored building?

A. Yes, sir.

484. Q. That was on that job?

A. Let me see. [Looks.] That is the back of No. 7. Here is—we have got an area that is back of Building No. 7.

485. Q. Now, what was the difficulty you had there, of which you spoke?

A. We got the powerhouse—the powerhouse group is where we started, and went up without the scaffold but it was on No. 7 that we had the crazy difficulties about how much tolerance there would be from the header centering directly over a stretcher below.

486. Q. Well, what trouble did you have, now, with the Government representatives, and that they required anything, or did accept it, or did what?

363 A. They required me to tear down a great deal of places where the bond was off as much as an eighth of an inch, moving it.

487. Q. Was it in this Building No. 7?

A. In Building 7, where it occurred most. Before I went to building exterior scaffolds.

488. Q. The most they required you to tear down was where those walls went an 8th to a 16th of an inch?

A. That is the greater, from and 8th to a 16th. If it was a full eighth, I had to tear it down.

489. Q. That meant the shifting of a 16th of an inch?

A. Yes.

490. Q. Could that be detected at a distance of fifty feet?

A. It couldn't be detected at a distance of four feet, without you placed something directly on it.

491. Q. How much of that did they require you to build there?

A. I wouldn't say how much. Practically all the centers under all bondings. Usually, where he seemed to be the most anxious to get right would be the spacing directly under the window, so that header would appear immediately in the center of the window.

492. Q. All the way around this Building No. 7?

A. That is where he kicked on most, was immediately under the windows, is where, ordinarily, you kill anything wrong with your bond, is under a window, and over a window base. It is about the only place you have to shift your bond, slightly, is under a window.

493. Q. Now, about shifting that, was it necessary to
364 take new brick, or did you just take the brick you removed and put them back in with more or less mortar?

A. Usually you have to use them in backing up, place them in between, because they already have mortar on them.

494. Q. You took new brick for the facing, but you couldn't use that brick in the—what do you call it?

A. Backing up. If it had mortar on it, it was very hard to clean.

495. Q. But, in using that brick, then, for filling up, you had to use an expensive brick, when you had a much cheaper brick you could use?

A. Common brick.

496. Well, did that delay you and cause a good deal of expense on the job, or not?

A. The principal thing was the valuation of the money my bricklayers cost. They had a good deal of trouble, a great deal. Even let a good brick mason go because he (Feltham) wanted to stand directly over those brick, to line the brick, and my brick masons resented it. That involved all of them, they just didn't do efficient work.

497. Q. Well, did you have a foreman over those bricklayers?

A. Yes, sir.

498. Q. According to the generally accepted custom, what was the proper method of giving directions to those bricklayers?

365 A. For him to tell the foreman what he required, and his objections, and let the foreman have it corrected, of course.

499. Q. Well, did he make the criticism or direction over the heads of the foremen?

A. The majority of times, he directed the bricklayers—he stood there and pointed it out.

500. Q. Would you say that was a violation of the general rules of the trade?

A. Yes, sir.

Mr. BALL. We offer this picture of Building No. 7.

The COMMISSIONER. Plaintiff's Exhibit 34 (marked).

By Mr. BALL:

501. Q. Well, was it on that building that the demand for outside scaffolding arose?

A. That's where it originated, I think; that and No. 6 Building.

502. Q. I believe you said the office had a record of the buildings on which you had those scaffolds?

A. Yes, sir.

503. Q. Now, did you have any experience with Captain Feltham in trying to force you to employ more men than were necessary on the job?

A. Well, that was one of the complaints, that I did not employ all the men I could work.

504. Q. Did you have all you could work?

A. He made many demands that I start other work that I was not at the immediate time working on.

366 505. Q. Were you working all the men you could effectively to make progress on the job?

A. Yes, sir; I had sufficient time to complete in schedule time.

506. Q. If you had put on more men, as was requested by him, would it have been a waste of money?

A. Yes, sir.

507. Q. What was it about the water tower that complaint was made? What was the water tower matter?

A. The Parrott Farm had two water towers; one large high tower, and then one little tower, that was known as the service water, the other the drinking water, and our water system was a continuation of the Parrott Farm water system, just enlarged, and, in every sense our supply, and he objected to me using the tanks as a storage basin, and the facilities there to supply my water needs. Immediately, we took that objection to Washington, and it was handled shortly. It was agreed that we had the right, they were ours when the job was completed, and we had the right to use them.

508. Q. In other words, they overruled Captain Feltham's ruling in that matter?

A. Yes, sir.

367 509. Q. In regard to fine grading in basements. Did you explain here that sometimes you had to do your fine grading twice?

A. Yes. Captain Feltham ruled that it was not ready for the plumbing and heating men to take over and dig their ditches until my fine grading had been completed, and he ruled this in writing and verbally, both. Mr. White—I am sure there is a letter on record—after their ditches had been backfilled, I was compelled to do this over, for the simple reason that there was a surplus amount of dirt, the displacement of the pipe that took the place of the dirt, so there was a surplus, and then they never packed it back into the ditch as much as they could, and like it was out in the hard ground, which was a considerable extra dirt to remove out from under the buildings, together with the expense of regrading and reworking the ground area in order to receive our slab.

510. Q. Fine grading, if I understand it, correct me if I am wrong, means that you have smoothed your surface down to the point where you are ready to pour concrete, acceptable to the inspector?

A. Yes; that is where you prepare your ground, generally considered as the floor, it is all graded, not as smooth, but as true for general level.

511. Q. Have you made an estimate of the extra cost of the double fine grading on this job, which was unnecessary except for those conditions?

A. I tried to make the estimate, once; but I don't think I ever completed that, because I was very busy in a large operation, and I did not complete my estimate.

368 512. Q. Was that in accordance with the general custom in regard to such matters?

A. No, sir.

513. Q. Did you ever see it done before?

A. Never.

514. Q. Can you give any reason why you were required in this instance and on this job to do that?

A. None whatever, except that it gave the Redmon Plumbing & Heating Company more time to resume and do what they planned to do, somehow.

515. Q. You mean by that, by adding to your work, it took more time, therefore?

A. Granted them more time.

516. Q. Granted them more time? That is your explanation?

A. Yes, sir. That is the only explanation I understand about it.

517. Q. I am not sure whether I asked the question, whether the rock furnished, the stone furnished from the Sholtz quarry, resulted in any delay to Mr. Blair and Redmon?

A. No, sir; the quarrying of the stone did not delay the operation at any time.

Mr. WATSON. I wish the record to show that the Government still insists upon its objection as to the Redmon Plumbing and Heating Company.

The COMMISSIONER. Yes; that, whatever technical objection you have as to that company, goes through all of it.

Mr. BALL. That extends over all of it.

518. Q. I now show you some correspondence, something about a conference between you and Mr. White, and Captain Feltham, having to do with the waiving of some requirements in reference to the boiler house and structural steel, and the Redmon
369 work that had to coordinate with it. Did you make any agreement by which you waived any rights in that connection, as you recall?

A. No, sir; not whatsoever.

519. Q. Did you have any such conference?

A. We had a conference with reference to the approval, or information that the Virginia Bridge Company was required about the work, and in that conference Mr. White informed Captain Feltham, in my presence, that he had furnished the Virginia Engineering Company the information required at that time, and I agreed, if that had been furnished, that we could go ahead—something to that effect.

520. Q. Unless I am mistaken, this first reference is to a conference in March. Well, Mr. White had just got there on 3/19th—this is 1934—do you remember that conference? The Virginia Engineering Company was not in it at that time. Are you speaking about another one?

A. No. One of the things we was pushing them on the hardest that, at that time; was some information needed at the boiler-house. Well, of course, getting that through next, that was the principal talk, I think, in that conference.

521. Q. Instead of being the Virginia Engineering Company, it was the Virginia Bridge & Iron Company?

A. Virginia Bridge and Iron Company.

522. Q. Oh, yes; of course.

A. If I said Engineering Co., I didn't mean it. The Virginia Bridge Company. The Virginia Bridge Company had the contract, and was seeking information from Mr. White as to the fabrication of that material that he had to furnish the information on.

370 523. Q. Well, did you make any agreement with them that they need not stop to punch holes here if the shop drawings were for the holes to be punched; here?

A. Mr. White agreed that he would pay the expense of punching necessary for a certain part of it at that time, and I said, if he would, go ahead.

524. Q. Now, complaint is made in some of the correspondence here about the pouring schedule breaking down. Did you furnish Captain Feltham a copy of the pouring schedules, from time to time?

A. Yes, sir.

525. Q. Well, did they break down?

A. We were able to meet any schedule we ever made, except were were prevented either by the mechanical equipment contractor or Captain Feltham from pouring as outlined, I think. I don't think there was hardly an exception to that. There might have been one or two occasions where we failed to be in position to pour.

526. Q. When the Redmon progress report was made by the Government, April 15, 1934—which will go in evidence, if it is not in yet—there is a reference to Blair retarding Redmon in his work. We there ever any such condition existing there?

A. There is no case whatsoever where he was retarded doing anything—he had spaces throughout the job, both in and out of the buildings, that he could have been at work on.

A. All that is on that, I think, will be in the correspondence. Well, we would get, when he was there, they ruled that this labor had to be skilled labor, whether or not. The appeal was taken, and the Veterans Bureau would not grant the appeal. I did appeal from Captain Feltham, and my memory is that he said he already had a ruling on it, and, therefore, didn't transmit it to anyone at Washington, because he had what he quoted me as an interpretation in one of the letters, as to an interpretation of that matter—that is my memory now.

529. Q. That letter is in evidence this morning?

A. Probably so.

530. Q. I wish you would explain in regard to the tests of the concrete, and the length of time that it took you before
371 you could begin to pour, and where your tests of concrete were made? State concisely and clearly!

A. Well, we employed The Pittsburgh Testing Laboratory to make the required tests, and design the mix, under our specifications, and they did design a mix of certain limitations and to meet certain requirements. The Pittsburgh representative came to Roanoke and spent considerable time with the local materials at Roanoke and designed the mix at our job; that is, he designed

several mixes, all of which were too harsh and unworkable at the time, and we shipped this material from there to Pittsburgh, or to Baltimore, rather, is where they were running the tests, at the Baltimore office, and he designed, finally, a mix that we could pour and did pour.

532. Q. What was the mix finally determined on?

A. I couldn't state that mix, but it was within the specifications, to meet certain—

533. Q. I understand they had a number of tests?

A. A certain cement ratio, but I couldn't quote that, offhand. We have a record of what the concrete was. And then it was a very difficult mix to pour on account of the character, or the harshness, of the aggregate, which was a local material, produced by one of the big material houses of Roanoke—I can't call the names, right now.

372-373 534. Q. Did you have a Pittsburgh—you refer to Pittsburgh laboratories?

A. Yes, sir; Pittsburgh testing laboratories.

535. Q. They had one office at Baltimore, to which these samples of material were sent, for them to make up a mix?

A. Yes, sir.

536. Q. Now, how long did it take to get that done?

A. Oh—off hand—we were possibly a month getting that mix. I couldn't say exactly, it was a long time. It was a tremendous time before we ever got that.

537. Q. Were there certain specifications, requiring a certain length of time before they would pass on it?

A. Yes; we had a twenty-eight-day test that we had to meet, but we lost time in getting a mix that would work, that would meet our working condition, and had to wait the 28-day test time, before we could pour it.

By the COMMISSIONER:

538. Q. That is where your honeycomb comes in, the Court understands, according to your mix, isn't it?

A. Yes; that has something to do with your honeycomb in concrete in every case.

539. Q. What has more to do with the honeycomb than the mix?

A. I don't know anything that has more than the mix, except careless pouring.

540. Q. Oh, yes.

A. But this was required to be vibrated very heavily.

541. Q. Then that—

374 A. That is a very harsh mix, you can hardly take care of it any way.

542. Q. You ought not to have it, then, that way?

A. Oh, it is objectionable.

By Mr. BALL:

543. Q. You spoke of a vibrator—were you delayed in getting a vibrator?

A. Yes, sir; they specified certain requirements of the vibrator, that we almost failed to find a manufacturer that could produce. We corresponded with all the known houses that might handle those, and we failed; but we finally wrote the Department of the Veterans' Bureau, and they informed us that there was an agency for one at Los Angeles, California, and we immediately brought two from there, which took a considerable time to get them transported from there to Roanoke, Virginia.

544. Q. Did you have difficulty with Captain Feltham in regard to the location of the mixing machinery or the mixing plants you made use of?

A. Yes; that was one of the most difficult things we had to handle. In the first place, in arranging to pour the tremendous amount of concrete we had to pour, we made arrangements with Hicklin to furnish us that concrete for this job, that is, do the mixing for us. He is a specialist along that line, and, in fact, he bought a Blow-Knox ready-mixture concrete plant and proposed to set it up on the reservation, together with a large
375 paver, a one-yard paver, to do our work, the large paver to pour places, where it was inaccessible for getting the ready-mixed concrete there easily, or when it is to our advantage to use the large paver. Captain Feltham took the stand that we could pour with the paver, but that we could not use the ready-mix plant. We appealed to Washington, and they ruled with us, that we could use it, and that it would be desirable to use the ready-mix plant and then Captain Feltham, since we could use the ready-mix plant, said we couldn't use the paver on any operation. And we appealed this; and, after considerable time, and a trip to Washington, he was overruled, and we were allowed the privilege of pouring with that other concrete plant or the concrete from the other paver.

545. Q. Did it cause you any delay, or expense, or inconvenience in the job?

A. Considerable delay and expense, and, in the meantime, we had to pour from the central plant, the same that we had planned before with the paver.

546. Q. Just what difference is there between your paver and your mixing plant?

A. The mixing plant does the mixing in the plant.

547. Q. Weighed?

376 A. Weighed for both. Every bit of material that went in there, in and out, is weighed; but, before dropping it into the other, we had to weigh it and weight it as far as the whole

of the raw material, and the paver, it was weighed, too, with the exception of the water. Everything was weighed in both of them, except the water. We had to transport the dry mix to the paver and then add the water at the paver.

548. Q. Had that central mixing plant been submitted to Captain Feltham before he bought it?

A. Yes, sir; he went with me to look at it, and examined the plant before it was taken down there to the job.

549. Q. Where was it?

A. In the City of Roanoke.

550. Q. Did he, or not, approve it?

A. Yes; so far as a new mixing plant, and the late model—as late as he had seen anything of—he was very favorable towards its use.

551. Q. What did it cost?

A. I wouldn't want to say. I think it was possibly—the records ought to show—but it was a good many thousand dollars. It was a late model, steel tower, with flare system attached to it, that would run into considerable money—a good many thousand dollars.

377 552. Q. Did you, or any other representative of Mr. Blair, go to Washington on that matter of the mixing plant?

A. Yes, sir.

553. Q. Who went?

A. Mr. Andrews made several trips. I think I was with him on one trip. I am not certain I was. I was there on so many things, I am not sure whether I was there on the mixing trip, or either of them.

554. Q. Did Captain Feltham or Mr. Dodd make a ruling there that you must give two hours' notice before they came to inspect, before you could pour?

A. Yes, sir; I had a written notice.

555. Q. Explain that, particularly?

A. I had written notice, after I got well started working in our areas, that he must have on all occasions two hours' written notice before he would inspect the steel or slab form, before we would have the right to pour, and that he must have two hours to examine the foundation where that steel had been placed in it, before I could pour it, or before I could inclose the steel, where I had only set the steel up, and then place the steel—anything on the outside, before he would examine it—before I could inclose any steel—.

378 By the COMMISSIONER:

556. Q. Did he issue you any such order when you were working up in Atlanta, in the same matters?

A. No, sir. When I was in Atlanta, I had only one unsatisfactory piece of business with him.

By Mr. BALL:

557. Q. What is the general usage in that particular in regard to giving two hours' notice, or any other notice, for inspection, under the same conditions?

A. It has been my experience that the Government supervisor is at the building at all times when the work is going on, and, without question, when you are closing up work that needs inspection at the time.

558. Q. Did you ever hear of such a thing as the Government requiring two hours' notice of an inspection, under those conditions?

A. Never in all my experience, nor anyone else.

By the COMMISSIONER:

559. Q. Whether right or wrong, did he give you any reason for doing it?

A. Which?

560. Q. Why he was demanding that two hours' notice?

A. He just had to have time to get to it.

561. Q. Is that what he said?

A. Yes, sir.

By Mr. BALL:

562. Q. Well, what did you understand by "getting to it"? The distance he would have to travel?

A. The idea appeared to me that it was more than he could do if he did not have sufficient notice.

379 563. Q. Well, it was some two or three thousand feet across that reservation, the extremes of the buildings?

A. Yes, sir; in my opinion—this could be verified—it could be verified very easily—some four thousand feet from one end to the other, where we was operating.

564. Q. How many inspectors, outside of Captain Feltham and Mr. Dodd, did they have on this work?

A. He kept one man in the mixing plant, which is just a local man he put up there, that had no authority on the inspection, and that, outside of Mr. Dodd and Mr. Johnson, he never had anyone that could pass on our work.

565. Q. How about Lawrence and Lipscomb?

A. They went with inspectors, that went around to insignificant, small work, that didn't involve much. Lawrence was assigned work, generally, that didn't require that kind of inspection.

566. Q. Were they experienced men, men of any experience, or what experience?

A. I judge they were men of very short experience; Lawrence was quite all right.

567. Q. Over this entire job, all this going on, to have only three real operating inspectors, on the job?

A. Yes, sir; and one of them was stationed at the mixing plant, and stayed there.

380 568. Q. Did they come in response to your notices promptly, or did you have trouble about that?

A. A great many times, no, they did not; we would have engagements, and it would an hour or two, or sometimes until the next day, before I got inspection on it.

569. Q. Well, what was the effect on your work of that delay?

A. Well, I just had to make new plans—start new, on something else.

570. Q. Suppose you had wooden forms erected at that time, and they didn't come up for a day or two, what effect did that have on your forms?

A. Well, forms, after they dry out, out under the sun, or the rain, or both, they become open or warped; after the heat of the sun shining on the boards, it will tend to warp them up, and be in bad shape to receive a slab.

571. Q. Well, would you say that good practice would indicate that the inspection should be made at once, so that you could pour shortly after your forms are put up?

A. That has been my experience. So far as that, under our normal inspection, we can proceed to build our forms.

572. Q. The effect of your form being to shrink in the sunshine, standing up there any time, or to swell from the rim, did that cause you delay or expense?

A. Yes, sir. Under a great portion of the inspection, they waited to make a check of the dimensions of the forms which they

381 required, that they would make checks immediately of the dimensions of the forms, and when the form had stood up some length of time, they required me to start applying water on it. We had a great many places formed, and steel in, and in a long building, and it increased the length of my forms as much as an inch or an inch and a half, and this would automatically misplace a beam, even in the middle of it, to some extent, but particularly the wall beams on the exterior of the building, and, in that case, I had to rip it off and let it back in to the desired length.

573. Q. Constructing a work like that, and the kind of labor in regard to such forms, what was your experience in regard to carpenters, in that respect?

A. In my own experience, my experience is that the better form men I have used, throughout the whole of it, has been that what is known as intermediate carpenters, and that is by reason of the fact that it is a rough, heavy work, and our best mechanics don't like to do that class of work. It is too heavy, in the first place, and it is just the opposite of what our best grade of mechanics like to do.

574. Q. Well, would common labor do for that intermediate work?

A. No.

575. Q. And common labor wasn't to be paid but forty-five cents an hour?

A. Yes, sir.

382 576. Q. What was customary with reference to intermediate grades in carpenter work? Were they recognized in the trade, generally?

A. They are recognized in the trade—always have been recognized—as apprentices and helpers in that class of work.

577. Q. They have been generally recognized by the United States Government by their contracts as intermediate labor?

A. Yes, sir.

578. Q. Entitled only to the intermediate scale?

A. Yes, sir.

579. Q. As a matter of fact, does the Government publish a statement in regard to such matters, which are recognized as intermediate grades, and actually fix a price of from fifty to sixty cents an hour?

A. They have, a great many times, as long as they have been publishing it—even at Roanoke, under the rules that apply—let's see, the minimum wage law, it is known as the minimum wage law, since the wage law was passed, there have been different interpretations and regulations, outlying the pay of those intermediate grades, and classifying what they can do by the various departments.

580. Q. Well, what did Captain Feltham do with regard to this, the intermediate grades of carpenters, in matters of wage?

383 A. He ruled there was no intermediate grades that could be recognized, and that he was either a mechanic or a laborer.

581. Q. That being true, what class of labor did you use for the intermediate work—did you use skilled carpenters, journeymen carpenters, or did you use intermediate, inferior labor?

A. Well, we had to pay all of them at \$1.10. We had the intermediate part doing it, but we had to pay \$1.10 an hour to both of them.

582. Q. Do you know what is the prevailing wage rate in that part of the country, or what was the wage for this intermediate grade of carpenter work?

A. I had it furnished to me by various sources up there. I think, now, it was from sixty to sixty-five cents an hour. But I am not positive about that. It is on record. I have a letter on it.

583. Q. Do you recall the Chamber of Commerce writing the Employment Bureau of Roanoke, pertaining to a certain home office wage scale, which they said was in force up there?

A. I think so.

584. Q. And they thought applied to this job, in which the intermediate classes were recognized? To Mr. Durden?

A. I think he sent that to Mr. DeVinney, and Mr. DeVinney sent it—

585. Q. Yes, it was not to Mr. Durden, but to Mr. DeVinney?

384 A. Yes.

586. Q. Do you recall whether you had any conversation, or that Captain Feltham talked with you about that wage scale after it was sent there by the Chamber of Commerce of Roanoke?

A. I did.

587. Q. What did he say about that wage scale at that time? That was before you began work, at all?

A. He agreed with me we would post that as our scale, and I did, I wrote it out accordingly.

By the COMMISSIONER:

588. Q. Who said to do that?

A. Captain Feltham.

By Mr. BALL:

589. Q. Now, did you have any trouble of the same kind regarding the bricklaying or the work with the bricklayers, or the stone masons, or any other of the classes of workers?

A. Well, our business was with the International Union. They insisted on furnishing some entered apprentice masons; and I think I was refused that; I didn't make that request, and the local Union insisted that I use them, and I agreed to use them if he would supply them; but I don't think I was ever given any; I don't think any trade was allowed or recognized, intermediate trade—in fact, I know they were not.

590. Q. Do you remember whether Captain Feltham undertook to require the payment of the wage scale fixed in the contract about the work being done in this quarry, some ten or twelve miles away from the site of the job?

385

A. He came to me and gave me an order, that I did have to pay—I did have to secure my men the same way I did on the job.

591. Q. Well, did you protest against that, or seek any ruling on it, and if so, with what result?

A. No—I looked up what authority I could find, and I just refused to do it, and failed to do it.

592. Q. You refused or failed, on the ground that what?

A. That we were complying with all the requirements on the quarry, and within our contract, in my, what is known as the President's—let me see if I can say what I want to say.

By the COMMISSIONER:

593. Q. Was it proclamation?

A. Well, when the NRA was in force, there was fixed a scale in our line, called the mechanical wages and scale code, the authorities made that up, what the Code authorities for stone quarries was paying, and we made that wage scale and set it up by the stone quarry authorities, under the Code, at that time.

By Mr. BALL:

594 Q. You say Captain Feltham approved that wage scale that the Board of Revenue had furnished, which was early in January? How long was it after that before he changed his mind, or undertook to force you to pay \$1.10 for the intermediate classes of labor, as you have outlined?

386 A. Immediately after we began work.

596. Q. That would make it in January or February, you began some of the work in January?

A. I don't think I had a real complaint until in March—I am not sure about that.

597. Q. Do you remember that, although you had begun work, and had considerable work done the latter part of January, 1934, that Captain Feltham reported to Washington you hadn't done anything, and you got a letter from Washington, from Colonel Tripp, probably, asking when, asking Mr. Blair when he would begin work, although the work was already under way? Do you recall that?

A. Yes, sir; I recall it.

By the COMMISSIONER:

598. Q. What did you do when you learned of that letter from Colonel Tripp to Mr. Blair?

A. With Mr. Blair? I think that—I am not certain what I did do. But I think I called his attention to my daily reports as to what we were doing at the time, and what was shown, which I had to show to the Montgomery office, every day; what had been done, and what was being done, and also called his attention to

Captain Feltham being aware of all that was going on, and being there.

By Mr. BALL:

599. Q. Now, Mr. Roberts, your specifications required you to have certain provisions for heat when cold weather came
387 on. Your progress schedule called for completion on November 1st. When did cold weather set in up there?

A. That would be hard to answer, but it was during November, some time. In November, we had some cold snaps. But no cold weather before November first.

600. Q. I have here a record, which we wish to offer in evidence shortly, in which we speak of temporary heat at Roanoke, and common labor, cost of labor, and cost of material. Now, in the latter part of October 1934, you bought a large number of heaters and stoves, and coal—things of that sort—was that for the purpose of temporary heat, to anticipate the cold weather that was coming on?

A. Yes, sir; we were preparing for that.

601. Q. Do you recall whether it was necessary for you, and whether you did use any of that prior to the first day of November 1934?

A. I don't think I could answer that. I don't think we did. But I couldn't answer that. I will say this—my daily report will show if I did.

602. Q. Well, did you send in a report covering all of the expenses connected with the temporary heat, so far as you had them?

A. Yes.

603. Q. Mr. Roberts, now, I show you, and I wish you would look at this Exhibit No. 34, the Building No. 7, and in front
388 of that building there is something there that looks like it is piled up—what is that? Has that anything to do with the trenches?

A. There is Redmon's material, some pipe, and conduit, and materials piled along there. That line right through here [indicating on photo]?

604. Q. To the left of the center of the picture?

A. Yes, sir; the same, as far up to the right is that saw table.

605. Q. Now, the photograph is marked as being taken January 31, 1935, and the work which you say is indicated here was not yet done at that time, was a part of Redmon's work? Is that your answer?

A. Yes, sir; he had the ditch that came right down through where that bench is sitting.

606. Q. Almost entirely across the front of the building?

A. Yes. It came down through there, and off of the reservation.

607. Q. I show you Exhibit No. 33, which is a photograph of the Nurses' Building—is there any indication there of Redmon's work being unfinished?

A. There is a large open ditch that is facing it, in front of it, and on through by the Parrott House. It took an angle
389 just to the right of this building and angled thru to the Parrott House.

608. Q. That is December 31, 1934?

A. Yes.

609. Q. I show you Exhibit 32, which is the Main Building, as of November 30, 1934. Are there any indications there of Redmon's unfinished work?

A. Yes, sir; they have some open ditches there, and they have batter boards up where they have been—haven't dug the ditch.

610. Q. You mean where those batter boards are, the ditches are yet to be dug?

A. Yes, sir.

611. Q. By Redmon, for the purpose of installing pipe?

A. Yes, sir.

612. Q. On the outside work?

A. Yes, to the area on the right, they have got the ditch open—over here [indicating], you can see the end open, the ditch here on this part having been cut out.

613. Q. Do you remember for what that ditch was being dug?

A. Sewerage or water line, I think.

614. Q. I now show you, in a batch of photographs, a photo of Building 6, as of December 31st, Building 2, on the same date, Building 5 on the same date, and Building 13 of the same date (the four photos constituting Plaintiff's Exhibit No. 35), and I will ask you—

390 Mr. WATSON: That is not in evidence?

By Mr. BALL:

615. Q. Which we will offer in evidence, in a moment. I would like for you to tell us if there is any evidence of the Redmon work being unfinished, in these photographs?

A. This is a very large, open ditch, immediately back of the boilerhouse. It ties up right with the other ditch coming across by Building No. 7, referred to in the first picture, and that is a machine, still digging at that point, and this immediate back part, the position I am in looking at this picture, is the loose dirt on each side of the open ditch.

616. Q. That has yet to be backfilled, I presume, and tamped?
A. Yes, sir. And the digging completed.

617. Q. That is on Building 13. Now, this is on Building 5.

A. They have open ditches in front of that building, open at this time.

618. Q. All right—look at the next, that is, Building No. 2. That is the Recreation Building, isn't it?

A. This is the front. This is the side view of the front. And on the right, next to, or between Buildings 1 and 2, they had a ditch that passed through, under the passage or corridor leading from Building 1 to 2, and the ditch was still open, beyond, open through on the end. I don't see any other ditch shown on the back one.

619. Q. Yes, that is the Acute Building?

A. Well, they have a ditch there open all the way across.
391 that, all the way across to this covered passage, where it passed under that passage.

By the COMMISSIONER:

620. Q. That is left?

A. That is the passage leading from 6 to 7, and from No. 6 here, over to the covered way—that comes back to No. 5.

Mr. WATSON. I again renew my objection to all this evidence concerning the Redmon contract.

The COMMISSIONER. The usual Redmon motion, and the usual ruling on the motion.

Mr. WATSON. I save my exception.

Mr. BALL. As far as we are concerned, it is understood it may be saved at any time, to save time.

621. Q. Now, the conditions you have referred to in these last seven photographs, did they interfere with the completion of this work—Mr. Blair's work?

A. Yes—for the simple reason that we had walkways, and driveways and roads to build across these areas and these ditches.

The COMMISSIONER. Did you introduce those last four?

Mr. BALL. I thank you for reminding me. We will do that now. We intended to do that.

The COMMISSIONER. Plaintiff's Exhibit 35—a set of four photographs. (Marked.)

By Mr. BALL:

622. Q. I will ask you if these objects to which you have just testified were part of the outside work of the Redmon Heating Company, and about which you testified some this morning, that they could and should have been completed within
392 four or five months after the first of January 1934?

A. Yes, sir; that is the ones I was referring to.

623. Q. Now, Mr. Roberts, you were the general superintendent of this job, and I ask you to state if you recall anything else that we haven't asked you about in reference to unfair criticism or inspection on the part of the Government representatives? Do you recall anything you have failed to state on the issues we have been discussing?

A. Well—

A. Well, things that I think the court should know would be what I deemed his demands over and above the direct requirements, which we considered very expensive, and caused a great deal of delay.

The COMMISSIONER. Other than you have testified about?

A. Other than that I have testified to.

By Mr. BALL:

624. Q. Let me remind you of one that you may have overlooked. Now, what about the jack arches required, and the conversation that ensued?

A. That demand was not carried out, but I was punished, and was told at the time that if I didn't carry it out I would be very sorry of it; on all the windows in the rubblework in the basement, our contract required a stone lintel, which consisted of a plain stone, twelve inches wide, and enough length to span over the opening, and when we built our sample, that was presented here

393 this morning, Captain Feltham made a very strenuous request of me, that I make those arches out of jack arches, and asked me would I do it. I told him at the time I would investigate it, and, if I could do it without any additional cost, and he had the authority to change the contract of the Department, I would be glad to do it. I did investigate the matter with Mr. Wilson. I found it was practically impossible to get the stones of the composition, shape and weight, shaped, and, therefore, I made no further attempt about it, and when I built those, he objected strenuously to carrying the square arch out, and said I had already agreed to do it, and that I would surely carry my agreement out or he would make me wish I had carried it out.

By the COMMISSIONER:

625. Q. This is referring to what exhibit?

Mr. BALL. This is Exhibit 26.

A. This is the arch, immediately over the opening shown in this sample that I have reference to, which was over every opening in the basements.

By Mr. BALL:

626. Q. The specifications called for straight lintels over the openings in the rubblestone?

A. Exactly as shown.

627. Q. What he asked you to do was to build an arch, which would, six, eight or ten—pieces of stone.

A. That narrow opening you see it would be three there, on the wide one, but it would be five—it practically goes up to 394 be a key piece in the middle.

628. Q. A matter of appearance, only?

A. Appearance, only; and would have actually weakened the actual strength of the construction. Another case that I considered very unfair and uncalled for was on the reinforced steel on Building 14, which was flat slab construction, and the one that was referred to this morning, where the columns was—two of them—slightly off. After I got ready to pour, he mentioned the temperature steel not being in this slab. We had discussed it the day before, and he had agreed with me that it was not required, and not shown, and not required, in any case where two-way reinforcing steel was supplied or required, and, after I set up my equipment and proceeded, started pouring, he stopped me, and told me I would have to place reinforcing steel in this slab—not reinforcing steel, but temperature steel in this slab. I appealed to him that it wasn't required, and was not intended by the man that designed the reinforcing, and he simply stated that I would have to shut down and appeal to Washington for a decision on that, or put the steel in, and, of course, I put the steel in rather than stop operations, and did appeal to Washington and had him overruled, and, after that, all of the work that he could require, he required steel under the same conditions. There was any number of similar cases, but 395 those were two of the outstanding cases, that struck my mind, without trying to outline or plan something definite.

629. Q. Mr. Roberts, taking into consideration the whole approach and the performance of the contract, would you say that the attitude of Captain Feltham and Mr. Dodd to Mr. Blair's forces was one of, I may call it, "constructive criticism" or "cooperative consideration," or what would you say the attitude of both of them to this Blair organization was?

A. There was never a time that we had the full cooperation and what I term the suggestive and helpful criticism from the Government authorities on the Roanoke Hospital. It was more of a type of detective or spy system, making of small irregularities by workmen that hadn't been trained in the particular branches they were given, which naturally needed correction, great matters.

630. Q. In your experience on Government work in the past, what has generally, if not always, been the attitude of the superintendent of construction, and those working with him?

A. My experience is that the majority—well, in practically all cases, they have been helpful, and of the type that wanted to build the building the best, build it good for the Government.

631. Q. Would you say the failure to have that cooperation on the part of the Government representatives in this case contributed to the delay in the completion, toward the end, or at any other time?

396 A. It did, very materially, and would on any other operation where the inspector took the attitude that was taken there.

641. Q. Now, prior to the Roanoke job, what was the last job you had under Captain Feltham's inspection?

A. Atlanta, Georgia.

642. Q. You got along with him there, all right, did you not?

A. Yes, sir.

643. Q. He did not show any signs of physical disability at that time, did he?

A. Only one time, that he showed anything that was unusual, or that almost any man might show.

644. Q. Well, during that time, did he act in a very wrong, unreasonable manner?

A. Yes, sir; one time, very much so.

645. Q. As much so as in this Roanoke job?

A. I would like to describe for you, if you would permit me, what he did—if it is all right.

646. Q. Are you working on a Government job now?

A. Yes, sir.

647. Q. Which job?

A. The Birmingham Housing job.

648. Q. That is not a Veterans job, is it?

A. No, sir; it is the Housing Division, of Washington, which is a very much more technical job than in the Veterans work.

649. Q. You testified you started excavation on the job about January first?

397 A. No.

650. Q. Between January 1st and January 10th?

A. I think it was around the 14th when we started the excavation. I am not sure, but it was up towards the 10th or 15th, when we actually started.

651. Q. On your direct examination, did you not state that "I went there January first to tenth"?

A. I don't think I said that, I didn't try to.

652. Q. Was the ground in very good shape at that time? Could you excavate?

A. We did, very successfully, as is evidenced by the fact that we started about the 14th, on or about that time, and about the 22nd I had four buildings excavated, which is evidence that the ground was in fair shape.

653. Q. I see. I want to ask you did you figure on these specifications for finishing on this job by November 1st?

A. I did not do the estimating and figuring. That was done in the office.

654. Q. You did not perform any of that work?

A. No, sir.

655. Q. Yourself?

A. No, sir. That is not my duty. After they find our program—

656. Q. After it is made, somebody may pass on it and suggest a change, and then—

A. If he saw fit, at the job, we could, and felt like we could do it.

398 657. Q. Now, did you have any orders from the head office to complete the job by November 1st?

A. I had a thorough understanding all the time of the limit we had on it, what we had set up in our book, because I had a copy and all that kind of information with me in the field office.

658. Q. Under ordinary circumstances, could you have completed the job by November 1st?

A. Under ordinary circumstances, in my experience?

659. Q. Yes, sir.

A. I certainly could.

660. Q. Now, wouldn't it be necessary for you to rush the work and skimp it some in order to complete about November 1st?

A. My answer is no. And my reason for that is based upon experience at Dayton, Ohio. I had been through a very much more difficult job, that seven stories, with more complicated and more difficult work to do—more marble, more expensive materials involved, and more plumbing fixtures involved. I did do that in ten months to a day, from the time I got off the train until I got on one to leave.

661. Q. Tell me how many laborers did you take from Montgomery, Alabama, to Roanoke, Virginia, on this job?

A. Laborers?

662. Q. Workmen and employes?

399 A. I carried my overhead, or a majority of my overhead. I would have to go into detail to tell you. I could recall, possibly.

663. Q. Well, approximately, how many did you take from here down there, or up there?

A. Well, it would be—I might name them to you and you might count them.

664. Q. Well, just give us an approximate amount. Fifty or a hundred?

A. Ten or fifteen men, I might say.

665. Q. That was—was that the amount included in the ordinary office overhead that you gave in testimony?

A. I expect it would go to twenty, if I included the office.

666. Q. Exclusive of the office?

A. Ten to fifteen.

667. Q. Ten to fifteen men?

A. In a supervisory capacity.

668. Q. Not any common labor?

A. I didn't carry any of those, whatsoever.

669. Q. Any skilled labor?

A. No skilled labor.

670. Q. Now, tell us, Mr. Roberts, the date, approximately, when this bad feeling originated between Captain Feltham and yourself?

A. I don't think it has ever originated between Captain Feltham and I, because—

671. Q. I don't mean the personal element, I mean as to your differences of opinion on the job?

A. It started immediately, when I hired the first man to come to this job.

672. Q. Right from the start?

A. Yes, sir.

673. Q. From the start?

A. From hiring men.

674. Q. Do you feel that that was constructive criticism on your work?

A. I do not.

By the COMMISSIONER:

675. Q. Is Captain Feltham still in the service?

A. Yes, sir.

676. Q. And Mr. Dodd, too?

A. I understand he is still in the service; I don't know that to be true.

677. Q. And Mr. Dodd, also?

A. I understand he is still in the service.

By Mr. WATSON:

678. Q. Tell us why did Captain Feltham object to you passing material around the Parrott House?

A. I know no other reason except he was occupying that building, he and Mr. Dodd, too; and they were using the swimming pool, and that was their play ground.

679. Q. Personal reasons?

A. No other reason, whatsoever.

By the COMMISSIONER:

680. Q. That wasn't in January, was it, when they were using the swimming pool?

A. That wasn't when I was denied the use of that road.

By Mr. WATSON:

681. Q. When were you denied the use of the road?

A. It was, when I was denied the use of the road, I don't know, but I think it was in August. I am not certain. It was in the middle of the operation when I was denied the use of the road.

682. Q. August 1934?

402 A. I think that is the date. It is along that time, it could be a month off, one way or the other. The records will show that. You have that in a letter, in a letter from me.

684. Q. Now, we have had that testimony in regard to that "overhand" or "handover" business of laying the brick. Did the specifications or the contract specify how these brick were to be laid?

A. No, sir; it designated the kind of a bond to be had, that is, a Flemish bond, and the kind of a joint, also, that was to be laid with that bond.

685. Q. Well, then, this ruling of overhand or handover laying is one of Captain Feltham's rulings? Is that true?

A. Yes, sir.

686. Q. Now, you had many difficulties, how many disputes with Captain Feltham or Mr. Dodd, while you were on the job—and you also made numerous complaints to Washington; is that true?

A. We had numerous difficulties, where he made demands that we thought were unreasonable, and we did appeal to Washington; yes.

687. Q. Is there any reason you can give us for not referring all these disputes to Washington? By that, I mean these
403 disputes over laying brick, the diversion of material around the Parrott House, and small, little disputes that you have testified to on direct examination?

A. That experience that we had in going to Washington, and finding out the feeling that had existed between Captain Feltham and his superiors, immediate superiors, proved expensive, because we did appeal some, and he didn't like that. He had to pass the papers on and he took advantage of that, and he might start something else.

688. Q. In other words, you had constant disputes, then, during the job? •

A. And, therefore, we made every endeavor we could to carry out his wishes, and to meet his unreasonable demands, rather than to go to Washington, which is customary in operations, as we try to please; that is our business, to please.

689. Q. You testified at great length on this overhand method of laying brick. Will you tell us how you got materials up on the floors when you lay the brick from the inside?

A. We passed it up on the work elevators at the end of the slab, and rolled it to the point, which is the same way we had to get it up to both inside or outside; it had to go that direction.

404 690. Q. You had to get it there the same way?

A. That was naturally through the window and out.

691. Q. But you would have to bring it up on the elevator, either way?

A. Yes; on the elevator, the same way, and roll it across the slab.

692. Q. So it makes no difference whether you laid from the inside or from the outside, you would still take it up on the elevators?

A. Have to take it up on the elevators, yes, sir; but we didn't have to pass it out of the elevators, out the window and into the outside scaffold.

693. Q. Now, taking it in the elevator on the outside, how would you use it? Would it be taken on the scaffold and then used?

A. For outside? It had to go through on the slab, anyway, and then pass it out. It would be impracticable to roll the wheelbarrows around the scaffolds.

694. Q. Now, tell us, did you use your scaffolds on the other buildings there? You had numerous buildings. Did you take the scaffolding down and use it on another building after you completed one building?

405 A. Not, without it was on the last building. I might have had sufficient finish work to move it, and that was for the simple reason that we were carrying this all on simultaneously.

695. Q. In other words, you had all the buildings scaffolded and were operating on all the buildings at once?

A. With the various crews of bricklayers.

By the COMMISSIONER:

696. Q. Trying to run all the buildings up concurrently, rather than consecutively?

A. We would build to the second floor, ready to slab that, and immediately move to another building, build a scaffold, and had to suspend all until we came back, after we have poured the slab.

By Mr. WATSON:

697. Q. Was this method of laying brick, this overhand method, mentioned in the copies of the specifications that you had?

A. Not any method mentioned in there.

698. Q. How many different things were torn down on the orders of Captain Feltham and Mr. Dodd?

A. I couldn't answer that question. A great many places, under windows and in bonds on the windows. A great number of them, I couldn't say how many, until I went to building scaffolds.

406 After that, he ceased to be so particular about measuring for the sixteenth of an inch.

699. Q. Do you recall an inspection by Colonel Tripp of this project?

A. Yes, sir; I recall him coming there shortly before the President of the United States came.

700. Q. On this inspection, did he require you to remove any walls that were out of line, or that didn't come up to the specifications?

A. Colonel Tripp did not.

701. Q. He did not?

A. Colonel Tripp did not. Another representative came one time, in regard to some concrete walls, not Colonel Tripp.

702. Q. Who was this other representative?

A. I can't recall his name, but he was the—

703. Q. Was he a Government man?

A. He was a Government man out of that office. He was a concrete man in the Department, I don't remember just who.

704. Q. How many walls did you tear out for him?

A. I don't think I tore out any walls. We had, as I said in my first section, had some eight or ten columns, there is a record on back of it. I don't know just how many, three sections
407 of a column and one or two full length columns, and we repaired that.

705. Q. Did you remove any partitions for Colonel Tripp when he came there?

A. I don't remember moving anything for Colonel Tripp. Colonel Tripp was very complimentary, and expressed himself as exceedingly pleased with everything, to me, and also to others in our organization.

706. Q. Now, during the time of this contract, both Captain Feltham and Mr. Dodd insisted that you do a first-class job there? Is that right?

A. Why, certainly.

707. Q. Now, if both of these men weren't there, these Government inspectors, do you believe you would have performed a first-class job?

A. I know I would.

708. Q. In spite of all these differences of opinions and disputes?

A. So far, I have not got one that I am not very proud of, and I have had jobs where I didn't have inspection; that is, I had men there, but they sat quietly and let me build the building.

709. Q. Tell these disputes with Captain Feltham and Mr. Dodd were very small; is that the idea?

408 A. What do you mean? I don't get that question.

710. Q. I mean this, that if Captain Feltham and Mr. Dodd weren't there, you would have performed your work in just as acceptable manner? In a first-class manner?

A. Certainly, my work was done in a first-class manner.

711. Q. If they weren't there, you would have?

A. Yes, sir.

712. Q. Then these disputes you complain about, that you testified about, were very small? Is that right?

A. All those arguments were insignificant, and over very insignificant things.

713. Q. Tell us, Mr. Roberts, how Captain Feltham prevented you from pouring by your schedule, on the pouring of the concrete?

A. Well, by negligence on his part, to some extent, by not having inspection there when I had sections ready of walls, preventing me from even completing the forms until I could get him there, and then back again possibly thirty minutes, and yet, maybe, again, in the case of another one, it would be two hours before he attempted to come—that was a series of delays
409 on every form; and then not requiring the Virginia Engineering Company—not the Virginia Engineering Company, but the Redmon Plumbing & Heating Company, when they were in operation, to work with, along with my men, in installing or designating the points where their electrical boxes, and their sleeves, where everything involved that were affecting me in the building of my slabs.

714. Q. That is all right; I believe that is repetition. Now, did you present a complaint to Washington in this matter? On the question of pouring, I mean?

A. I did verbally; I didn't by letter. I did verbally, several times, explain my troubles in Washington.

715. Q. What was their reaction?

A. I was told by the project manager, Mr. Clarke—

716. Q. Who was he?

A. The project manager of Roanoke—that Captain Feltham was crazy, and ought to be run off the job.

717. Q. Mr. Clarke, here, now?

A. No, sir; he is the one in the Department in Washington.

718. Q. His immediate superior on that particular job?

A. That I would just have to try to please Captain Feltham.

By the COMMISSIONER:

719. Q. Is that the man that since died?

410 A. No, sir; the man that died told me a great deal more than that—that I don't want to quote a dead man.

By Mr. WATSON:

720. Q. Now, on that wage question—the question of these wages—did you take that up and make a complaint to Washington in that regard?

A. Not, except through Captain Feltham.

721. Q. Do you know whether he took that up with Washington?

A. He claimed he did, and quoted me what he termed a ruling from the Labor Department, and had it marked "quote."

722. Q. Did you see that ruling?

A. No, sir.

By the COMMISSIONER:

723. Q. What labor department?

A. The Department of Labor in the Veterans Bureau, or the Secretary of Labor?

724. Q. Which Department was it?

A. I never was able to get him to tell me. They had so many new set-ups under the NRA at that time, it was confusing to me just where he was getting it.

By Mr. WATSON:

725. Q. Now, about this mixing plant you testified about, that cost several thousand dollars. Are you still using that plant?

A. No, sir. That belonged to the man that we made a contract with to make us our concrete on the job—bought for that
411 particular job—and, of course, he moved it; he is still using it; that is, he moved it away from there.

726. Q. In other words, you didn't purchase that?

A. No, we didn't buy that, he contracted it; but we know he bought it for that particular job.

727. Q. You don't know whether he is using it now or not?

A. No; I couldn't answer that.

728. Q. Mr. Blair's company has no further interest in that?

A. No.

729. Q. You have had other inspectors on Government jobs, and you have had quite a bit of experience with them?

A. We have.

730. Q. Do all the Government inspectors insist on some time for inspection of your work? That is, notice before making their inspections?

A. I never have been required to designate a right time for inspection. I have had verbal agreements at certain times, when an inspector had himself office duties, that he would ask me to let him know before certain operations; but never a standard practice of, on all occasions, and he wrote me only the specific occasions, when he had something that called him off, temporarily.

412 731. Q. Now, on this Roanoke job, do you think the Government should have had more than four inspectors there?

A. To give the job constructive consideration and well supervise the job, by all means, yes. It would have been very much more helpful to me to have a sufficient number to do it well.

732. Q. How many do you think that they should have had there?

A. They should, at least, have had, in my opinion, a man on the powerhouse group.

733. Q. Just approximately?

A. And one—

The COMMISSIONER. Then what?

A. I think there should have been one for No. 2 Building at all times, or possibly one in 4, a man should have taken those two buildings fairly well. And in 6 and 7, there should have been one in each of them. Five could have covered the areas in that way.

734. Q. Do you think it would have taken six or seven men to have given the job fairly reasonable inspection?

A. That is, if they are to see the work as it goes on in the building, and not afterwards, when we were working the number of men we were working.

By Mr. WATSON:

413 735. Q. Captain Feltham was always on the job there, to inspect, was he not?

A. Captain Feltham was disabled a great deal of the time.

736. Q. Well, Mr. Dodd was there?

A. No, there were occasions when we had to hunt him, and he was in the city investigating labor, or some other place, what he was supposed to be, he would be in the city a great many times. Then he had some work of his own, he went out over the reservation, as a whole, working with a number of men in the woods, on the supervision which would be in the woods, with them a part of the time. He had those little affairs that he handled or worked himself.

737. Q. Now, Mr. Roberts, getting back to this wage scale. The wage scale, as far as Captain Feltham was concerned, was no greater than the amount fixed by the contract, that is \$1.10 an hour for skilled labor, and 45¢ an hour for unskilled labor? Is that correct?

A. I interpreted the contract to very definitely tell me that I must use the intermediate grade; that I would not be allowed to discriminate.

738. Q. What I mean is, that you were not required to pay greater than \$1.10 an hour?

A. Not for mechanics.

414 Mr. WATSON. Yes; I believe that's all.

Redirect examination by Mr. BALL:

739. Q. Just a few more questions: Did you have any experience with Captain Feltham and Mr. Dodd when they came to inspect and found some trivial matter in connection with the steel pan that was being poured, and then he go away and come back, and so on and so forth?

A. Yes; I had a case on Building 16, the roof slab of it, that they came and inspected the slab, and when the slab was started, observed the start, and then came back about—shortly after twelve, while I was gone to lunch, and stopped pouring that. And when I got back to the job, I immediately investigated what was wrong, and they stated that the forms were loose, and that we were spilling and wasting what they said was two inches of concrete on the slab below and pouring honeycomb, very low-grade, concrete. I made a careful investigation of this slab. I couldn't find anything that looked more like finished interior floor than it did, like form work, and the pans was bolted and very tight. I had a considerable argument with them about continuing on that afternoon, and they wouldn't permit it. I did clean off the

415 slab, out from among the steel—very costly—considerably many hands' time. I tore it out, which prevented me from pouring the slab. He stopped there and the next morning and made his complaints that we inspected the slab under that, and we found less than a sixteenth of an inch, and in pouring was discolored water, that small stain of water underneath, no droppings whatsoever, and the pictures of the slab showed perfect concrete, hardly any semblance or sign of honeycomb on that particular slab. It was as near a perfect slab as I have ever been able to pour. Then, on all the buildings, in the pouring, in the work of the men, they were very critical of the methods used; as an example, the foreman wasn't permitted even to hand a shovel to a workmen, unload the barrow, and then he had to get the next shovel and pick it up, and really went about so much that that was a labor loss not to not be permitted. That was a great number of times. We had one case where one of our foremen of trucks on the job got out of his car and rolled a stone out of the road. And he made a direct charge by letter that the man violated the contract in rolling a rock out of the road where the trucks travelled—merely a boulder.

416 740. Q. Was that what he considered a wrong class of work?

A. Yes; he couldn't do anything like that, as he was a foreman. And he rolled a rock out of the road, to keep his truck from running over it, what they call a niggerhead rock, as big as a water bucket, that had dropped off of the truck in the road. And that was daily and hourly, almost, things occurred like that.

741. Q. This reinforcement you have there, goes really on your first floor slab, or any floor slab, you would send for him to come and inspect that, and he would find some trivial matter, tell you to correct it, and then you would have to find him again, and then he would find something else?

A. That was particularly true about two different buildings. Fifteen, or the laundry building, I think it was 15, it was the laundry building, was the first place I had that kind of trouble. It seems that the plumber, Mr. White, made several errors in getting out his sleeves, and did not furnish the sleeves required for the whole job, in which case they would not point to the sleeve and tell him there are so many here in the slab which we have been unable to find anything wrong with, but when I was ready to pour,

417 they would come back and inspect it, but the second day, if that sleeve came we were permitted to pour, if not, they went over there and held up, and made further requirements on the slab which we had been unable to find anything wrong with. And then on Building 7, that was carried out a great deal more. The electrical work was very much back, held back on that job, and they would come to make inspection, and they would go about as far as there is any electric box, or the holes bored out for the conduits to go through, and clear it up pretty well, but, immediately after they got to where there was no boxes, or no sleeves, they would not refer to sleeves or boxes but refer to something else that they could see and tell me, you finish it and I will come back, and they done that repeatedly for quite a while. I don't know just how long, until all the electrical work and the sleeves were designated and installed, which, to my mind was connected with the idea that it was only marking time for the mechanical work to get placed.

742. Q. Were these things about which they complained matters of consequence—did it take any length of time to overcome them?

A. It could have been done very quickly, if we had had
418 someone there to designate the points where they were to go; but it seemed that I was due to go back to his office in every particular case and work out a plan just where to get the different locations for things to go, and the time was taken up in that way, and without sufficient workmen there to do what was required.

743. Q. Let me see if I understand you, that the inspector would come into a building, and say to you "There is something wrong

over here in the corner, we are not going to tell you what it is, but we will come back and inspect it;" is that what went on?

A. Well, hardly, I wouldn't say it hardly like that, he would say it like this, there would be a place where the mechanical men had drilled a hole, or should have a hole, and he would say "There is no hole, or see that showing, in the bottom," I had him to speak that way five or six times, and we had to go and pour at another place because he didn't get through putting down the lines—we didn't know where to pour—his mechanic was waiting for orders from Mr. White or some of them. Then, another thing, in that particular building, he decided then, without questioning me about that, after
419 some two days, to make me pour a stream of water on it, and then he would measure it, and find the building had expanded some three-quarters of an inch, and he might require me to cut it back down to the exact size, which was not necessary, because they did tie into the wall, which would permit for us to work it, without doing any damage whatsoever to the building. In an extreme case that might be required, but for the slight variation of three-quarters of an inch in a case such as that, we didn't consider it justified—relocating those beams.

744. Q. With your experience with inspectors on such projects as those, are the duties of the inspectors anything more than to criticise and find fault?

A. I think their duties are practically the same as mine, except he represents the Government, in helping to erect a building as near in keeping with the plans and specifications as it is possible, and that is what I would say that ninety-five percent of them try to do.

745. Q. Was that done on the Atlanta job under Captain Feltham?

A. The Atlanta job was a job that Captain Feltham had no help on, and he did make inspections, but I would say in over twenty percent of the work he made no minute inspection, the steel, the forms, and in a general casual way, he looked the work over, and watched me build it.

420 746. Q. And finally accepted it?

A. And stated, and does yet, that it is the best building the Government has got. It is a public statement to that effect.

747. Q. Do you mean to say that Lawrence and Lipscomb were not permitted to pass finally on this case, but that Captain Feltham and Mr. Dodd took to themselves all this inspection on the general contractor's work?

A. Lipscomb was stationed at the concrete plant. Therefore, he wasn't available on the work. And the other man was assigned to minor duties, and could not pass on things, but report

back to Mr. Dodd, and bring him to pass on all things that they considered important.

By Mr. BALL:

748. Q. What sort of work was Mr. Dodd doing in the woods part of this project, Government work, what was it?

A. Yes, they done various things, cleaned up the woods, piled the rubbish, bricks, rocks—just generally cleaning up the entire reservation.

By Mr. WATSON:

749. Q. I ask you if Captain Feltham was under a physical disability?

The COMMISSIONER. You might ask, more correctly, you
421 have already stated it—how much of the time was he able to do this inspection work, and look after the job?

A. I wouldn't want to get down close on the time; but there were periods that he would not be about for two or three days, or sometimes as much as a week—sick, with a very painful headache, and immediately before and immediately after that he was not able to get out and do any work.

Mr. KILPATRICK. We offer in evidence specifications under the plaintiff's contract.

Mr. WATSON. Subject to verification.

The COMMISSIONER. [After some discussion with counsel as to the original, &c.] Let that be marked Plaintiff's Exhibit 2-A [Marked].

Mr. KILPATRICK. We also offer in evidence the contract progress reports on Redmon Heating Company's work on the Roanoke job, which was furnished to the Court pursuant to the call.

Mr. WATSON. We object to it on the ground that it immaterial, irrelevant, illegal, prejudicial.

The COMMISSIONER. The objection is overruled, and excepted is noted. Mark it Plaintiff's Exhibit 36 [Marked].

Mr. KILPATRICK. We offer in evidence the progress reports of the plaintiff, Algernon Blair, on the Roanoke job, also furnished the Court in accordance with the call.

422 The COMMISSIONER. Plaintiff's Exhibit 37 (marked).

Mr. WATSON. This goes in subject to verification. No objection.

Mr. KILPATRICK. We next offer in evidence Bulletin No. 51, of the Federal Emergency Administration of Public Works, of date September 7, 1933. It has special reference to the labor rate controversy. Well, I think it is section 54. I believe it is referred to in the contract.

The COMMISSIONER. It all goes in as Plaintiff's Exhibit 38 (marked).

Mr. WATSON. No objection.

Mr. KILPATRICK. We next offer in evidence publication by the Federal Emergency Administration of Public Works, PW-23709.

The COMMISSIONER. Plaintiff's Exhibit 39 (Marked).

Thereupon, Mr. ALGERNON BLAIR, was recalled and testified as follows:

By Mr. BALL.

1. Q. Mr. Blair, you were asked, or stated in response to some question, in substance, and in a general way, that in all your dealings with the Government, you had never had a penalty assessed against you. Do you desire to make an amendment to that testimony at this time?

A. Yes. The statement has been in my mind, and I went through our records for more than fifteen years, which covers our
423 major work, of course, and I find that in 1924, in the final settlement of construction of Veterans Hospital at Gulfport, Mississippi, approximately a \$500,000.00 contract, that in the final voucher I was assessed \$150.00 for two days delay. I went further into it and recalled immediately, and asked for further papers, which they got, my office got for me from our accounting department, I found that we made the decision that we could contend that there was an error, from our standpoint, in the computation of the days, and in the allowance for a change order, which might have carried with it several days extension; but we decided it was not expedient to contend for an amount as small as \$150.00, which might defer final payment, and the delay might overcome, by way of interest on that money, the amount involved, so we accepted it. There was very little possibility of our being entitled to it, but the interest and attorney's fees might make it very incidental. I wished to make that statement. It was on my mind.

By Mr. WATSON:

2. Q. On this contract, here, the Roanoke job, you have not been assessed any damages by the Government?

A. None.

3. Q. You completed the contract in time?

A. I did.

424-425 4. Q. And were paid the final voucher?

A. I did. It was paid to me.

JOSEPH W. PATE, a witness produced on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. BALL

By the COMMISSIONER:

1. Q. Give us your full name?

A. Joseph W. Pate.

2. Q. How old are you?

A. Fifty-six.

3. Q. You reside where?

A. Birmingham, Alabama.

4. Q. What is your occupation?

A. I am in the mechanical equipment contracting business.

5. Q. Do you have any financial interest in the result of this lawsuit?

A. No, sir.

By Mr. BALL:

6. Q. Will you state, briefly, to the Commissioner your experience as a mechanical equipment contractor, to show your qualifications?

A. Well, I have been in the contracting business for myself twenty-one years, and I have constructed hotels, schools, office buildings, and various kinds of industrial plants—the mechanical equipment in that particular line. We never have constructed any work on this particular work that this case is involved in. I think that in classes of work outside of that, why we have been connected with it, through our firm.

7. Q. Well, have you had sufficient experience in various ways to enable you to examine the plans and specifications, and determine within what time a mechanical equipment contractor could, in harmony with the general contractor, complete his work?

A. What we would do; yes, sir. We have—let me state this: we have made an estimate on all these projects: Tuscaloosa, Biloxi, Saint Petersburg, and we weren't late on any one of those particular jobs.

426 8. Q. Were you on the Federal Housing proposition at Birmingham, that Mr. Blair has just finished?

A. Yes, sir.

9. Q. What did you do there?

A. We installed the mechanical equipment there.

10. Q. All of it?

A. No. The electrical work was done by a subcontractor.

The COMMISSIONER. I think he is clearly qualified as an expert.

By Mr. BALL:

11. Q. Have you, at the request of Mr. Blair, or Mr. Clarke, taken the specifications and the contract in this Roanoke case, and made your calculations on the length of time necessary, or that would have been necessary, for you or some one of similar capacity, to complete the mechanical engineering work, or mechanical equipment work on this job?

A. We have examined the plans and specifications, we figured the amount of time that we would take—I couldn't tell you what somebody else would take—but the time that we would take to do it, and, going over the progress sheet furnished by Mr. Blair, we figure we could do this work in the time specified in his progress sheet.

427. 12. Q. Now, if you had a job, like this, when would you have gone on your outside work?

A. January 12th [looks at papers].

13. Q. Is this a schedule of labor that should have been used on that job [showing paper]? Instead of reading it, if you have had that and examined it, so that you can say what it is—so that we can use it—

The COMMISSIONER. You have no objection to submitting that?

A. No, sir.

By Mr. BALL:

14. Q. Is that a statement of the labor you would have used in the performance of that work?

A. Yes, sir.

By Mr. WATSON:

15. Q. Is that your statement?

A. Yes, sir. You understand this shows the parts of the contract that we would subcontract, and that we would base our estimate on, superintendent's work, carrying along in the time that we specified that this work should be done.

16. Q. Then, in your judgment, could an ordinarily efficient contractor in this kind of work have completed in the time as indicated in your testimony?

A. Yes, sir.

428-429 By Mr. BALL:

17. Q. Mr. Pate, you said you had before you the preliminary progress schedule of Mr. Blair?

A. Yes, sir.

18. Q. As I understand, in Exhibit 23 and 23-A, there were carbon copies of that furnished you by the attorneys for Mr. Blair?

A. Yes, sir; this is the sheet.

19. Q. You haven't compared it to see whether this is a carbon copy, and that the copy is correct, or not, but you worked from that?

A. I worked from this (carbon copy).

20. Q. You were in position to go over the whole thing?

A. Yes.

The COMMISSIONER. Plaintiff's Exhibit 40, consisting of how many sheets, Mr. Ball?

Mr. BALL. Nineteen sheets (marked).

Mr. WATSON. No cross.

FREDERICK E. DURDEN, a witness produced on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. BALL

By the COMMISSIONER:

1. Q. Give us your full name?

A. Frederick E. Durden.

2. Q. How old are you?

A. Forty-six.

3. Q. Where do you reside?

A. Montgomery.

4. Q. And your occupation is what?

A. Construction superintendent.

5. Q. Do you have any financial interest in the result of this lawsuit?

A. No, sir.

By Mr. BALL:

6. Q. State, briefly and concisely, your experience in the business you are engaged in?

A. I served my trade as a carpenter's apprentice, and worked as a carpenter about eight years, and started with Mr. Blair on the Tuskegee Hospital group, as a carpenter foreman. From there I was transferred to Gulfport, Mississippi—another Veterans Administration Hospital job, as a general carpenter foreman. From there, I was transferred to Carrville, Louisiana, on a leper colony, as a carpenter foreman, general carpenter foreman. From there, I was transferred to Perry Point, Maryland, in a group of Hospital buildings for the Veterans Administration as a carpenter foreman for a certain group of buildings in that particular place, and from there I was transferred to Columbus, Georgia, or Fort Benning, Ga., rather, as a carpenter foreman, and from that location I was transferred to Biloxi, Mississippi, with Mr. C. W. Roberts, as carpenter foreman on a hotel job. And from that point

I was transferred to Perry Point, and then after that to the Georgia Springs Cotton Building, as general superintendent, and from that point I was transferred to Northport, Long Island, in a group of hospital buildings for the Veterans Administration; 481 and, after that, I believe to what they called the Veterans Operations, at Wyeth, Ga., at the beginning of the operation of six buildings, consisting of the service group, two main hospital buildings, administration building, and nurses building.

7. Q. That is what we speak of as the Northport, L. I., job?

A. Yes, sir; Northport, Long Island, job. From there I came to Montgomery, and was on the Greystone Hotel, for a short time. I believe that's right. I believe the Science Hall, out at the Women's College at that time, and from there I went to Lancaster, Pa., and constructed the Post-office Building, of which I was general superintendent, and from that point the next job I had charge of was at Fort Benning, Ga., a group of forty-one officers' quarters, approximately \$400,000.00, and from that point I was sent to Spartanburg, S. C., to construct post-office building, and from Spartanburg to Key West, Florida, to construct a post-office building, and from Key West, I was transferred or sent to this city, and worked a short time on this building with Mr. C. W. Roberts. From this point I was sent to Jacksonville, Fla., and constructed a post-office and courthouse building in that city. From Jacksonville, I was transferred or sent to Roanoke, Virginia, to help Mr. Roberts in the construction of that project.

482 8. Q. You are still employed by Mr. Blair?

A. Yes, sir.

9. Q. Do you remember about what time you got to Roanoke?

A. I arrived there on March 18, 1934.

10. Q. Who was then in charge of Mr. Blair's work?

A. Mr. C. W. Roberts.

11. Q. What was your position at Roanoke?

A. I was detailed as assistant to Mr. Roberts for the construction of the buildings.

12. Q. You had nothing to do with the outside work?

A. Practically nothing. As a matter of fact, just my observation as I passed over the job. If I saw anything that I thought needed attending to, of course, I reported to Mr. Roberts.

13. Q. Your duties were confined largely to the interiors of the fourteen buildings?

A. The exterior and interior—in other words, the construction of the buildings.

14. Q. Now, you had a field office there, which was really the scene of your operations?

A. Yes, sir.

15. Q. Under Mr. Roberts?

433

A. Yes, sir.

16. Q. Did the Redmon Heating Company have a field office?

A. Not at that time.

17. Q. Did they, later?

A. Yes, sir.

18. Q. Did they have it prior to the time when the Virginia Engineering Company took over its work?

A. Yes, sir.

19. Q. Now, when did the Redmon Heating Company first have any superintendent, or any representative, on that job?

A. Well, it was very vivid in my mind, because when I arrived we were very much perturbed at not having a man there.

20. Q. Who was?

A. Mr. Roberts and I arrived there, to the best of my remembrance, March 19th, three days after I arrived there.

21. Q. At that time did you have any conversation, or at any time, with Captain Feltham or Mr. Dodd, as to the delays of Redmon, up to March 19th?

A. No, sir.

22. Q. When did Redmon begin work?

A. Why, in a small way, I would say within a week or ten days after he arrived there; I don't recall the date, the exact date, he started in a small way, he began to get a few sleeves and
434 things, got it started in a small way in a week or ten days.

23. Q. What was the largest number of men he had in his employ there under Mr. White, according to your recollection?

A. I never did check on this, as a matter of fact. I would say the largest number he ever had, in my judgment, would not exceed fifteen or twenty men, all told—mechanics and laborers.

Mr. WATSON: We again renew our objection to testimony as to Redmon. I believe all this has been covered by Mr. Roberts' testimony, and it is a repetition of the other witness' testimony.

The COMMISSIONER. It is a question of cumulative evidence. It is a question in the sound discretion of the plaintiff. Objection overruled, exception noted.

Mr. WATSON. Note my exception.

24. Q. Did you ever see Redmon himself on the job?

A. No, sir.

25. Q. When you went there, and up to June 26, when his contract was terminated, did he have any equipment in the way of machinery and tools necessary to the performance of his work?

A. Equipment, tools and machinery, you say?

26. Yes, sir.

A. Oh, I suppose that he had a few pipe-cutting tools,
435 but no machinery to do that with—just the hand tools, my
recollection. Very little equipment.

27. Q. Well, did he have what you would say was necessary
to the performance of the work in harmony with the general con-
tractors' work?

A. Decidedly, no.

28. Q. Well, you were there at the time, then I will ask you
if, or whether or not Mr. Blair's work was interrupted and inter-
fered with by the failure of the Redmon Heating Company to
do its work?

A. Yes, sir.

31. Q. To what extent did Redmon interfere with Blair's con-
tract?

A. Well, the fact that he failed to install the necessary sleeves
in the buildings. I was interested, primarily, in all the buildings,
proper.

32. Q. That is what I want you to testify about?

A. It was Redmon's job to place, or locate, rather, the sleeves
to be placed in the forms that we poured the concrete around,
and to install certain conduits for electrical work. His failure
or slowness to do this, naturally retarded our work.

33. Q. What about the sewer pipes under the basement slabs?

A. Well, naturally, they should have been installed as
436 soon as possible after we started to work, which was not
done.

34. Q. Did that condition continue from this time that he had
the contract to June 26th?

A. Yes, sir.

35. Q. What percentage of his work, would you say was done
June 26th, on the buildings?

A. From four to six percent.

36. Q. From four to six percent?

A. From four to six percent. It would be a hard matter for me
to tell just how much.

37. Q. After his contract terminated, the Virginia Engineering
Company took over the work, under the Maryland Casualty Com-
pany?

A. Yes, sir.

38. Q. And, during the interim, did Mr. White continue to do
some work?

A. Yes, sir. Mr. White was retained by the Virginia Engineer-
ing Company, as an assistant, I believe, to Mr. Updike.

39. Q. Mr. Updike was its superintendent?

A. The Virginia Engineering Company superintendent.

40. Q. When did the Virginia Engineering Company complete the Redmon contract?

437 A. That I don't know, because I left Roanoke before the completion of the job. I left there about February 7, 1935, and it was sometime after I left there before they completed it.

41. Q. In other words, it had not been completed February 7, 1935?

A. No.

42. Q. At that time, was there work inside the buildings yet to be done?

A. Yes—oh, yes.

43. Q. With special reference, I ask you, to Building 13, the boiler house building?

A. Well, progress in that building was retarded quite a bit by Redmon's failure to supply us in the beginning with certain detail information, which we had to have for our subcontractor for the structural steelwork, which was quite an item, but we never had that information. As a matter of fact, I don't think we ever received that information until after the Virginia Engineering Company arrived on the job and took it over.

44. Q. Do you remember with reference to what part of the structural steel, or other equipment, in the boiler building, this interference arose?

A. That is something that I don't definitely remember; but it was something in connection with the ash hoist and storage
438 bins for coal. The equipment Redmon was to furnish—that is, the mechanical contractor, was to furnish—and establish the work, and it tied into our work.

45. Q. And whose work was the structural steel?

A. That was to be installed by the Virginia Bridge & Iron Company.

46. Q. But, had Redmon's work been completed in reference to that matter, up to the time you left, on February 7th?

A. Yes, I believe it had been.

47. Q. Had this delayed the installation of the boiler in the boilerhouse?

A. Well, we didn't have anything to do with the boilers. Naturally, that delayed the work, because of his failure to furnish certain information, as I said awhile ago.

48. Q. Well, who had the contract for furnishing and installing the boilers?

A. That was the mechanical equipment contract—the Redmon Plumbing & Heating Company.

49. Q. Do you know about when those boilers got in there?

A. No; I don't remember that.

50. Q. In your experience, as a general superintendent of construction, and your knowledge of this job, I will ask you within what time the Blair work should have been finished, in the orderly process of things, and if not interfered with—do you know the length of time they planned to finish in?

439 A. Yes, sir.

51. Q. All right?

A. We had a schedule to finish by November 1st, and had Redmon carried his contract out; and carried out and finished his work, with ours, we certainly could have finished by November 1st.

52. Q. Would you say you could have finished both the inside, and the outside work, entirely, by that time?

A. Yes, sir.

53. Q. Did you have anything to do with the correspondence with Redmon, in regard to delays?

A. No.

54. Q. Or with the Government?

A. No, sir.

55. Q. Did you have a conversation with Captain Feltham or Mr. Dodd in regard to these delays?

A. Oh, we talked about it frequently, but we never could get much out of them. As a matter of fact, at times, Mr. Dodd and Captain Feltham would say "We fear he will never be able to carry his contract to completion," and at other times it seemed like everything was going along OK.

56. Q. You mean, as far as their conversations were concerned, it seemed to be going along OK, to them?

440 A. At times.

57. Q. At times?

A. Yes, sir; at times.

58. Q. Which one, Captain Feltham or Mr. Dodd, expressed fear that Redmon would not finish his contract?

A. On two or three occasions, both Captain Feltham and Mr. Dodd.

59. Q. What did they say, what was the reason given for the expression?

A. Well, Mr. Dodd at one time said that they had some connection with Redmon Plumbing & Heating Company, at some other operation, I don't remember where.

A. And that was his ground or reason, I suppose, for his stating his opinion, he was afraid they would fail, and the fact that they hadn't at that time gotten any equipment to the job, delivered there. The equipment that was there was almost negligible.

By Mr. BALL:

61. Q. You had no conversation with the Veterans' Administration on the subject?

A. No.

62. Q. You didn't go to Washington or write, at all?

A. No.

63. Q. Did you see any of the correspondence from Washington in regard to these delays?

A. Surely I must have read some of that. I don't recall it.

64. Q. Now, you were all over that project—what were your real duties in the construction of these buildings, from time to time?

A. To see that the work was carried on properly, to keep all materials delivered, to see that they were delivered to ones that needed them, and that the workmen were dealing it out properly. In other words, to carry the construction on in regular order.

65. Q. Were you on the job constantly?

A. Yes.

66. Q. Going over the buildings daily?

A. Yes, sir.

67. Q. And did you, or not, keep thoroughly informed in regard to what was being done?

A. Yes, sir.

68. Q. And in regard to what was not being done?

A. Yes, sir.

69. Q. Did you know what Redmon had to do under his contract?

A. Yes.

70. Q. Were there any other independent contractors on that job besides Redmon and Blair?

A. Not to my knowledge.

71. Q. Now, did Blair's operations at any time interfere with or delay Redmon Heating & Plumbing Company's work?

A. No.

72. Q. That you know of?

A. In no way.

73. Q. In your opinion, based on your experience and knowledge in such matters, within what time could Redmon have finished his work, if he had carried on with reasonable diligence, in harmony with the general contractor?

Mr. WATSON. We object to what Redmon can do.

The COMMISSIONER. I overrule the objection. Note the exception.

Mr. WATSON. We except.

A. I would say certainly within the time our schedule contemplated, by November 1st; and, if Redmon had coordinated his work with ours, from the beginning, there certainly should have been no reason why he should not have completed on or before.

By Mr. BAIL:

74. Q. Did you see the blueprint preliminary progress schedule that Mr. Blair had?

A. Yes, sir.

75. Q. Was it posted in Mr. Blair's office?

A. Yes, sir.

76. Q. Was there a copy in Redmon's office?

A. I don't know.

443 77. Q. Was there a copy in Redman's office?

A. Yes, sir. I saw one in Captain Feltham's office.

78. Q. Now, when you speak about a blue print progress sheet, to what do you have reference about that, or the general statement that he proposed to finish by November first?

A. No. We have what we call a stock progress sheet, the times to build, in which we group all buildings, as the case might be. We have it on all our work. We have a schedule which we are supposed to follow. Certain items by or according to the work; for instance, we have dates on which we expect to pour, or for pouring a certain building, and that is true of the masons, interior work, all the operations.

79. Q. Is this blueprint, Exhibit 16, the chart which you originally set up as being your schedule of operations, and which was posted in Mr. Blair's office, and in Captain Feltham's office?

A. Yes, sir. It was similar to that [looks at 16]. Yes, sir.

80. Q. Is this it?

A. When I say "similar," I mean that my recollection would be, it would be an exact copy. I don't know. There might have been some difficulty we had. To all intents and purposes, it is the same.

444 81. Q. Now, as a matter of fact, Mr. Blair's contract was not to finish until February 14, 1935, when it was planned to finish by November 1st. What prevented him from following the schedule and completing his contract with ten months, within that time?

A. The failure or delay of the installation of the mechanical work.

82. Q. Did Mr. Blair have any other interference in the construction of this work, other than the Redmon interference?

A. Well, we had peculiar inspections up there, which were an item of interference.

83. Q. Just state it, concisely and briefly, what did take place that interfered with the orderly progress of Blair's work.

A. Well, in the beginning, when we started forming our various buildings for concrete work, we, of course, were handicapped a great deal by various and sundry reasons for not doing certain things, certain ways. As a matter of fact, Captain Feltham and Mr. Dodd, both, ruled that we should place the reinforcing steel, for instance, ahead of the electrical work, and that, of course, is not the usual manner and way to do those things, but, they should be placed ahead of the steel; we ordinarily have the mechanical man to go along right behind, the rough work, we might call it, to lay out exactly the location of the electrical outlets, and certain plumbing sleeves that were to be installed, that we might place certain forms to receive these boxes. We couldn't do this, because Captain Feltham said the steel must be placed first, and that, of course, necessitated, after they came to that outlet, having to remove the pans and install the headers to receive the outlet boxes, and, in some cases, to take out sections of pans to receive sleeves for the plumbing. Of course, this all would retard the work, and made it quite expensive.

84. Q. That necessitated double work?

A. Clearly.

85. Q. What experience did you have with reference to the basements, with reference to the basement slabs?

A. Why, we were prepared, the fine grading, and prepared for the slabs, before Mr. Redmon was required to dig his trenches for his underground pipe. This, of course, necessitated our coming back and regrading those areas, after he had completed the installation of his underground work; that, of course, is unusual. What he should have done was to have gone in there and install the things before we had our fine grading done; then one grading was all that was necessary.

86. Q. Was there any physical reason why he should not have gone in there and done that work in an orderly manner, keeping out of your way?

A. No, sir.

87. Q. Was that true in a large area?

A. Yes, because, don't you see, we didn't start, I don't believe, until after the Virginia Engineering Company took it over, and then we didn't have any trouble.

88. Q. You made good progress after they came on?

A. After they had time to get their materials and forces on the job, it was carried on, of course, as well as could have been.

89. Q. You say Redmon had not finished more than from four to six percent, at most?

A. That would be my guess. As a matter of fact, I have no way of knowing.

90. Q. What he had done consisted of what, in a general way?

A. Just a few sleeves that were necessary for the work we had in place, practically no underground work, very, very little. As a matter of fact, it was almost negligible, what he had done up to that time.

91. Q. You spoke of the reinforcing steel being placed, and you spoke about pans, on what floors did they use pans,
447 these steel forms?

A. Throughout the job on the main buildings, that is 1, 2 and the roof slabs. Of course, he had very little work to do with the roof slabs, because they have holes only for the vent pipes going through there, and sleeves had to be placed in those, also.

92. Q. Reinforced steel had to go on each of these floors with those pans?

A. Yes, sir. Of course, we had some areas, what we term flat slab construction, didn't contain as many of them.

93. Q. Did that delay, the failure of Redmon to do that work properly on all of those floors and keep out of your way, did that delay your work?

A. Yes, sir.

94. Q. Was there ever a time when you all interfered with his work on these matters?

A. No; not to my knowledge.

95. Q. How frequent were the interferences by him while he had the contract?

A. Well, as a matter of fact, every time we were ready to work, we had to wait until he got these things laid out.

96. Q. What part did Captain Feltham and Mr. Dodd have in these delays?

448 A. That is where the theory I never could understand came in, except it seemed like Captain Feltham and Mr. Dodd were trying to prolong the thing to help Redmon. I don't know that is the case. That is the way it seemed to me, because everything was in readiness so far as our side was concerned, but so far as he was concerned there was a few sleeves put in, something of that kind, and it looked like in each case they would find some minor something wrong with our work, and, naturally, they would say "All right, you fix it and we will come," but I could see they were just trying to get Redmon time to get his work in or to lay it out.

97. Q. Did, at this time, Redmon have any forces there to do that work, and any material, to do that work?

A. He did not at any time have an adequate force.

98. Q. Well, in what other ways did Captain Feltham and Mr. Dodd delay you and interfere with you?

A. Well, they were delaying us quite frequently by just frivolous matters, with matters that wouldn't help or advance the job in any way.

99. Q. What was the general attitude of Captain Feltham and Mr. Dodd about the performance of the Blair contract?

449 A. Well, to answer that I would say, if you will let me say, I would say that it seemed that they didn't appear to care how long it took to complete the work, and in no way did they give us any constructive criticism, not at any time; it was more or less the reverse, in trying to retard progress rather than to help us.

100. Q. Were they prompt in inspections?

A. No.

101. Q. Explain why they were not, or in what way?

A. For instance, Captain Feltham required two hours notice, when we desired certain portions of the building inspected, for the placing of reinforcing steel, or for the placing of concrete.

102. Q. Were there any provisions in the specifications or in the contract for any such thing as that?

A. Not to my knowledge.

103. Q. Now, the general use in regard to that, did it call for notice of inspection in that way?

A. No.

104. Q. What is your mode of inspection on a job of that kind?

A. Ordinarily, the construction engineer will be on the job constantly, and when the steel has been placed, or the form
450 placed ready for the steel, he is just right along to make the inspection.

105. Q. Did they do that in this case?

A. No.

106. Q. How many inspectors did they have on this job, who were active?

A. Captain Feltham and Mr. Dodd were the only ones that I would call inspectors.

107. Q. They had Lawrence and Lipscomb, didn't they?

A. Well, Lawrence and Lipscomb, were young fellows, you couldn't really call them inspectors, because if anything at any time came up that they had to make a decision about any matter, they always had to run to Captain Feltham or Mr. Dodd to get the final decision. They would come and look the work over. Therefore, I don't think I could term them inspectors.

108. Q. Do you mean to say that Captain Feltham and Mr. Dodd took on themselves all the inspections of these buildings, is that what you say?

A. Yes, sir.

109. Q. How many inspectors, in your judgment, should the Government have had on the job, so as not to interfere with your work and delay you?

451 Mr. WATSON. We object to the question, as immaterial, irrelevant.

The COMMISSIONER. I overrule the objection.

Mr. WATSON. Note my exception.

A. Well, I would say, that to have adequately carried it on, I believe I would group them, and have one on the officers' quarters and nurses' quarters, and say the powerhouse group would be two, and the buildings No. 1 and 4, 3 and No. 2 was large enough to have two inspectors, would be four. On 6, 7 and 5, to do a good job, have one, really should have had on that group 5, 6 and 7, and it seems to me there really should have been some inspection for the outside work, at least one or two men. By the way, I do remember, we had a Mr. Johnson there for a while; that wasn't much of an inspector, however, he was on the mechanical side, and didn't have—

The COMMISSIONER. As the result of your calculation, what conclusion do you reach? How many do you think, approximately, they should have had on the job?

A. About six.

By Mr. BALL:

110. Q. Did he ever have that many?

A. No, sir.

111. Q. In the regular course of such business, should the inspectors be ready to do their work almost any time, all the time?

452 A. Yes, sir; it has been my experience that inspectors do stay on the job.

112. Q. If they do not stay on the job, can the contractor carry on his work in an orderly manner to keep up with his progress schedule?

A. No.

113. Q. Now, did these things interfere with anything else except the pouring, for instance, of the interior partitions and so forth?

A. Well, the installation of the interior partitions, of course, depended upon the installation of the mechanical work, and, to my mind that was—we were retarded it is hard to tell how much, because we could not at any time build a partition through a building until all of the mechanical work had been installed, and not only the partition, but all the subsequent work, had to be carried on and made complete, and the partitions, really, on all these floors, and the marble work, it all hinged, of course, all the time, when we did a piece of interior work or partitions whenever that would be installed or put in any building, we couldn't do that until the mechan-

ical work was installed. That retarded our progress a very great deal.

114. Q. Just state, concisely, what mechanical work has to do with the building of partitions, which had to be done before
453 you could build the partitions?

A. The water lines, plumbing lines, electric lines and steam lines. As a matter of fact, you follow the mechanical work, so far as the running of pipes was concerned.

115. Q. They go ahead and locate those things?

A. Locate them?

116. Q. Yes?

A. We have to, and such of them as may be——

117. Q. Was it Redmon's place to locate them?

A. Yes, sir; it was Redmon's place to install the pipe.

118. Q. Until that was done, could you proceed with that work?

A. Certainly not.

119. Q. Did he do that, and keep out of your way?

A. No, sir.

120. Q. Were you more or less interfered with and delayed on that account?

A. Yes, sir.

121. Q. You were delayed in what way, and what was your labor doing, was it idle or not?

A. The labor was idle. You could, of course, in some cases, we could run a partition in a certain place, and then go over and get another one, but that is always expensive to do that kind of
454 work. Nine times out of ten, you have got electrical conduit in each wall you run, such as the various things that belong to the plumbing and heating lines.

122. Q. What is the general usage in regard to general construction in reference to keeping them busy at all times?

A. Basing my opinion on practical experience, the moment we set up what we call our removable forms throughout the first floor slab, the plumbing contractor and mechanical contractor gets in and runs all his lines and gets them through that first floor, speaking of starting at the basement.

123. Q. Well, if you are ready for inspection, and the inspection of these things is not done, and ready for the installation of these things, and they are not done, what is the effect on your labor forces? Are they obliged to be idle?

A. Yes, idle; nothing they can do.

124. Q. I will ask you another question: what general effect does this have on the morale of your labor and your entire force?

A. It has quite an effect; because if any mechanic sees that he doesn't have much to do, certainly doesn't hurry to get that done.

He prolongs the job. If you keep him busy, and he knows he has something to do, just as soon as he gets through with this
455 partition, he will work along good, and carry on.

125. Q. Well, in order to carry on this job on the Roanoke operation, and complete it by November 10th, did it permit of any loafing, or delays on the part of the labor?

A. We could have finished by November 1st or November 10th too.

126. Q. Now, in regard to—how about the delay of the plasterers—did Redmon's failure affect that?

A. For the same reasons stated above, because you would not proceed with the plastering until the installation of all the plumbing, heating, electric lines, and so forth, had been completed—was in place.

127. Q. How about the interference with your marble and tile work?

A. The same reason.

128. Q. Did it interfere with the painters?

A. For the same reason, yes, sir.

129. Q. And that was true, practically, of all your work?

A. Yes, sir.

130. Q. Is it possible to take each one of these items claimed, and keeping a record of the time lost, or is it to be considered with reference to the general effect upon the whole contract?

456 A. Yes, sir; it would be a difficult matter, except to base the estimate on previous work of a similar character.

131. Q. You were speaking of the requirement of Captain Feltham and Mr. Dodd of two hours' written notice of inspections, when you gave those—did you give those notices?

A. Oh, yes, sir; we were required to.

132. Q. When you gave the notices, did you get a prompt response and inspection?

A. Not at all times.

133. Q. Well, how frequently did they fail to respond promptly?

A. It was a number of times they failed, the number of times they failed is hard to determine; but then, at times, Captain Feltham and Mr. Dodd could not be found; as a matter of fact, Mr. Dodd had other duties, and it was taking him over to Roanoke, naturally we couldn't find him, and couldn't get him on the job to make the inspections.

134. Q. When you got ready for inspections, could you give that notice before you got actually ready for the inspection?

A. Why, no.

135. Q. And when he didn't come, in what way were you retarded?

A. In the mean time, the labor was idle, waiting for the inspection.

136 Q. And you say that the help was, your labor, was entitled to be paid?

457 A. We had to pay them.

137. Q. And you did pay them?

A. Yes, sir.

138. Q. What was your experience with Captain Feltham and Mr. Dodd in reference to double inspection, or postponements, even after they got there?

A. Oh, that was quite frequent, when he arrived there, if the mechanical work wasn't exactly right, it seemed that they just tried to find some little misfit, anything wrong with our forms, or any mechanical line. This is my own opinion, my personal opinion.

The Commissioner. This is what, your personal opinion?

A. Yes, that they just prolonged the time, in order that the mechanical men might complete their work.

By Mr. BALL:

139. Q. You say that during all that time, you had the forces of men, and the material and equipment to carry on the work?

A. Yes, sir.

140. Q. Did Mr. Blair have ample equipment, as well as forces, to carry on his work?

A. Yes, sir.

The Commissioner. He still insists that's true.

By Mr. BALL:

458 141. Q. Are you familiar with any of the details in regard to the recesses that had to be left for radiators and radiator frames?

A. Yes, sir.

142. Q. Tell, briefly, about that?

A. The best of my memory, we were held up pending the arrival of certain shop drawings, or details, for this work. Our contractor—subcontractor—who was furnishing the miscellaneous or ornamental iron, had to be supplied with certain detailed information, before they could make up the work that we had to install. These details to be furnished by Redmon, of course; and why this is necessary, they have to, of course, being of various sizes to fit in various sized radiators, and, until we could get the information from Redmon, we couldn't do anything about it at all.

143. Q. Now, with reference to the outside work, Mr. Durden, how soon could Redmon have begun on that work?

A. I see not any reason why he should not have started, certainly in January. I didn't arrive there until February 16th.

144. Q. He had had notice——

A. March 10th, I mean, and I could see no reason why he should not have started in January.

145. Q. The evidence shows he had notice to begin about January 1st. Was there any outside work done, at all, while Redmon
459 had this contract?

A. No.

By the COMMISSIONER:

146. Q. Did you have anything to do with the outside work?

A. No; except in a general way. I didn't have charge of the outside work.

By Mr. BALL:

147. Q. You had nothing to do with the outside work of Mr. Blair or of the Redmon Heating Company, either?

A. No, sir.

148. Q. What you are stating in that particular is from your observations while you were there?

A. Yes, sir.

149. Q. Do you remember that Captain Feltham required the pans to be bolted?

A. Yes, sir.

150. Q. Had you ever been required to do that on any Government job before?

A. No, sir. Nor since.

151. Q. I will ask you about the brick laying and the placing of scaffolds. Now did Mr. Blair's force begin to lay the brick up there?

A. In the usual manner.

152. Q. What is the usual manner.

460 A. From the inside of the building.

153. Q. Is that called the "overhand" or "handover" method?

A. That expression is used a number of ways. I have heard it "overhand" or overhand inside and out. I think the brick layers use a number of expressions for that particular way of laying. You stand inside the building, and lay the brick out, face the brick up, first, and then fill in the back.

154. Q. Which is more expensive, laying from the inside, scaffold with the outside scaffold?

A. You mean the scaffold on the outside?

155. Q. Yes?

A. The outside scaffold is, and, at the same time, we use an inside.

156. Q. Leaving out the cost of the scaffolding, does it cost more in the laying of the brick?

A. The condition, as I understand, of bringing material to the masons?

157. Q. Can you tell us about how much more it costs to do it from the outside scaffold than from the inside?

A. I have never calculated that, but it must be around ten dollars a thousand more.

158. Q. You mean, then, you make that statement based
461 on your experience?

A. Yes, sir.

159. Q. Did you ever see scaffolds required in buildings of this sort.

A. No, sir.

By the COMMISSIONER:

60. Q. Outside scaffolds?

A. Outside scaffolds.

By Mr. BALL:

161. Q. Do you call them inside and outside scaffolds?

A. We have inside scaffolds, have to have them, as a matter of fact.

162. Q. I know, but I thought maybe they had a different name. Were you present when they put up these outside scaffolds.

A. Yes, sir.

163. Q. Do you know the circumstances under which they were put up?

A. Yes, sir.

164. Q. Were they required to be put up?

A. Yes, sir.

165. Q. And were they ordered by the Government representative?

A. Yes.

166. Q. Explain why—the circumstances under which they were erected?

A. Captain Feltham and Mr. Dodd said that we could not
462 do the job of that brick work that would be satisfactory to them unless we did erect the outside scaffolds, and, of course, we contended that we could, and that the job would be satisfactory; but they held out that it couldn't be done; and there was no way, of course, to force us to make the outside scaffolds except to make it kind of hard for us.

167. Q. Was anything said by Captain Feltham or Mr. Dodd about making it hard for you?

A. Oh, yes.

168. Q. What was said?

A. He said that he couldn't force us to build the scaffolds, but, if we didn't, we would be sorry; something to that effect. That may not be his exact words.

169. Q. Did that attitude prevail as to any other work there?

A. Yes, sir; I don't recall just what, but a number of times.

170. Q. Do you remember about the jack arches? Did you have anything to do with that?

A. I know there was some conversation about the jack arches, but that was handled with Mr. Roberts. Now, you are speaking of the jack arches in the rubble work?

171. Q. Yes.

A. All right.

463 Cross-examination by Mr. WATSON:

172. Q. Mr. Durden, are you certain that at no time Captain Feltham or Mr. Dodd gave you and Mr. Roberts no constructive criticism on this job?

A. I wouldn't say at no time; there might have been a time that they did.

173. Q. They did make some suggestions as to the method of construction?

A. Might have.

174. Q. Did they make any suggestions to you?

A. No.

Mr. KILPATRICK. Are you still talking about constructive suggestions?

175. Q. Yes, sir. Constructive suggestions or criticisms on the job?

Mr. BALL: May I ask one other question?

Mr. WATSON: Yes, sir.

By Mr. BALL:

176. Q. What requirement did they make, if any, about cleaning off the steel rods in some places?

A. The reinforcing steel?

177. Q. Yes?

A. On that, at all times, they were very critical, on this particular item. You are familiar, of course, with the reinforcement, the steel reinforcing in the column, which always projects sufficiently to tie to the next column going up, and it is almost humanly impossible to keep all the concrete, when you pour those, off the steel, whatever particular floor slab it may be. But in all cases, we have had what I call to "manicure" particularly that steel; we had, where it projects in through there, in fact, we have to get all the particles of concrete away from

each one in there. In my opinion, it didn't help the job, at all, and it cost us a great deal of money to do that.

178. Q. How extensively was that required? On all the buildings?

A. On all the buildings.

179. Q. How high do these rods extend above the slabs?

A. All depending on the size of the rod. Usually about twenty-four inches; probably, in some case, thirty inches; of course, you understand, the concrete didn't get all the way to the top, say from eight inches, down to the slab.

180. Q. If that concrete had not been removed, would it have affected the job, at all, in strength or appearance?

A. Ordinarily, we remove all the major portion of the concrete, in other words, get down to just stain. Why, certainly, it would not be detrimental to the strength of the building, in there.

181. Q. Is it usual to "manicure" these rods?

A. I have never seen it done before.

465

By Mr. WATSON:

182. Q. Mr. Durden, you don't know whether Captain Feltham ordered the erection of these outside scaffolds, do you?

A. These outside scaffolds?

183. Q. Yes, sir?

A. As a matter of fact, Captain Feltham did not order them.

184. Q. Who did order it?

The COMMISSIONER. He said Captain Feltham said if they didn't, they would be sorry for it. He didn't order them.

A. That is why the scaffolds were built.

By Mr. WATSON:

185. Q. Captain Feltham said—

A. We did it, as a matter of fact, knowing that if we did not do that, we would be penalized.

186. Q. In other words, Mr. Blair, or the masons working under the contractor, built the scaffolds voluntarily, is that it?

A. Yes, sir; we built them.

187. Q. And were the jack arches outside or inside the building?

A. Outside.

188. Q. That is no part of your work?

A. My particular work was the building construction, all the buildings, and the outside was just as important as the inside.

189. Q. You testified you had the inside work to do and
466 not the outside work?

The COMMISSIONER. Yes; he corrected the question when it was put to him, supplementing it by saying he was building it both inside and out.

By Mr. KILPATRICK:

190. Q. Talking about the "outside work" as referring to the grounds, that is right, isn't it?

A. Yes, sir.

191. Q. Your testimony was, that you were looking after everything about it, on the inside and outside of the buildings?

A. Yes, sir; that is right, and I was correct.

By Mr. WATSON:

192. Q. Were you working under Mr. Roberts, or Mr. Roberts working under you?

A. Mr. Roberts was my superior. I was his assistant.

193. Q. Then most of the dealings with Captain Feltham and Mr. Dodd was with Mr. Roberts and not with you?

A. Yes, sir.

194. Q. As a matter of fact, you don't know what Captain Feltham ordered Mr. Roberts to do on this job?

A. Well, probably I was present in some of those discussions they had.

195. Q. But not all of them?

A. Not all of them.

467 NEAL GORDON ANDREW, a witness produced on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. BALL

By the COMMISSIONER:

1. Q. Give us your full name, please?

A. Neal Gordon Andrew.

2. Q. How old are you?

A. Forty-two.

3. Q. Where do you live?

A. Montgomery, Alabama.

4. Q. What is your occupation?

A. Contractor.

5. Q. Do you have any financial interest in the result of this lawsuit?

A. No, sir.

468 By Mr. BALL:

6. Q. Mr. Andrew, are you now connected with Mr. Blair in any way?

A. No, sir.

7. Q. How long since you were?

A. A year ago last September 15th.

8. Q. How long were you employed by him?

A. Between fifteen and sixteen years.

9. Q. In what capacity?

A. In various capacities: engineer, estimator, project management, supervision.

10. Q. State concisely what experience you have had in this work.

A. I attended the University of Michigan.

11. Q. Were you engaged on this Roanoke contract, Mr. Andrew?

A. In the beginning of the work, I was not. It was towards the end of January that I first became involved in it.

23. Q. Now, did you go back?

A. I went back one time, temporarily to Roanoke and Washington, and then I went back and stayed there, I believe.

24. Q. What instructions did you have from Mr. Blair in reference to the matter?

A. That my duties there were to try to smooth the water, and see if we couldn't find some way to make some progress on the job.

469 25. Q. When you came there, what did you find out in reference to the progress of that work?

A. There was a great deal of friction, and a great deal of interruption of the work, and the conditions were most unsatisfactory to make any building progress.

26. Q. Friction between whom?

A. Between the Government officers and the Blair forces.

27. Q. What was the character of the friction?

A. About what was occurring, in general; all the troubles, I could imagine, labor troubles.

28. Q. Describe what occurred. Give your understanding of the atmosphere there in reference to your carrying on of this work, as you found it?

A. Well, on one of my own first trips there, I went out with the head of the concrete subcontractor, to look over, in the presence of Mr. Dodd, the central mixing plant that they proposed to put up, and they were overhauling their plant, and we all thought it was an excellent plant.

29. Q. Where was that plant?

A. It was erected right on the edge of the City of Roanoke?

30. Q. I mean, where?

A. Oh, it was standing on the—it was down in an area known as the mixing plant for the City of Roanoke.

470 31. Q. Oh, yes?

A. We all agreed that it was an excellent plant and would be a fine piece of equipment for the job.

By the COMMISSIONER:

32. Q. "We" included Mr. Dodd?

A. He certainly gave his moral approval, if not his actual approval; in other words, he passed judgment, with the rest of us, that it was fine equipment.

33. Q. What do you mean he did when he gave his "moral approval"?

A. He certainly passively gave his approval, and in such a way as to lead the others to believe he was highly in favor of it.

By Mr. BALL:

34. Q. Well, who said it was approved Captain Feltham; did he make any remarks about it?

A. There were no remarks of disapproval made; but, as for approval, I don't recall any definite approval, even; but it was the highest form of the equipment of that character.

35. Q. And, after that investigation, did Mr. Blair, or his sub-contractor, buy that plant?

A. He bought the plant and brought it to the place designated on the reservation for the erection of it, and it was erected.

36. Q. Was Captain Feltham a party to that?

A. He certainly was a party to the location of the plant.

37. Q. I am going to show you a photograph which is marked "18-5-31-34, Manager," which I shall offer in a moment, and ask you whether that is the central mixing plant that you are
471 talking about?

A. Yes, sir; that is the plant.

Mr. BALL. We offer that, now.

The COMMISSIONER. Plaintiff's Exhibit 41.

By Mr. BALL:

38. Q. Now, what part of this comprises the mixing plant?

A. This, out here, and this, which is a storage bin, and the conveyor which carries material into the storage bin. On there, there was located, under that large concrete mixer, and this is a room, away up here, was the means of dumping the stone and rock into the elevator, which started it up here [witness indicated points on Plaintiff's Exhibit 41].

39. Q. Did this frame building here [indicating on photo]—

A. That frame building was utilized for a cement shed.

40. Q. Had that been there before, before you went there?

A. Yes, sir.

41. Q. This foundation which appears in this is the end of the other building?

A. That was built—they demolished that while I wasn't there.

42. Q. That is not a part of the central mixing plant?

A. No, sir.

43. Q. Now, that mixing plant, was it a modern, up-to-date, efficient mixing plant?

472 A. Yes, sir; a high grade piece of work.

44. Q. Sufficient for the purposes of this job?

A. Well, that, in conjunction with the other mixer on the job, was sufficient.

45. Q. Now, did a controversy arise, or a difference arise, with reference to the use of a central mixing plant on this job?

A. When the mixing plant was first erected, as soon as the bins were completed for the dry batch, and other purposes, to measure both for transporting, but not exactly as soon as—you refer to as it was in place—then they started to use it as a central mixing plant, as well as a dry batch.

46. Q. That mixing plant was located at one extreme of the reservation, was it not?

A. It was located over close to what we call the residential group of buildings, which was quite at one extreme; yes, sir.

47. Q. I show your blueprint, being Plaintiff's Exhibit No. 9, and ask you if you will indicate approximately the location of that mixing plant?

A. Yes, sir; right about there [indicating].

THE COMMISSIONER. That is near the middle of the right side of the blueprint?

A. Yes, sir.

By Mr. BALL:

48. Q. Now, you say a controversy came up in regard to mixing and transporting. Just explain that.

473 A. When we started the use of the central mixing plant, my memory is that Captain Feltham refused to permit concrete to be poured from there, and I went to Washington to take it up with the officials there, the question of using a piece of equipment like that, and it was approved subject to our being able to deliver satisfactory concrete to the buildings. So we returned to Roanoke, and started the central mixing plant. I was present when the first concrete was delivered from the central mixing plant, under this agreement. Captain Feltham made the remark, "Now, that is what I call concrete," and at that time he wrote a letter to us approving the concrete, and in that same letter he instructed us to pour all concrete from the central mixing plant. I sent a copy of that letter of instructions to Colonel Tripp, more in the nature of asking him relief from the situation, because, there were times when we wished to pour concrete from the road-paver-type mixer or dry batch and he, Feltham, objected to using the road-type mixer, for the reason that in certain places it was not feasible, he complained, I don't know why the ready-

mixed concrete would be better than to have to take it from the paver mixer in this case. It was absurd. We could use the mixer. It was perfectly proper. There is no question whatever. The paving mixer was the one he first insisted on our using entirely, and after that he said later we couldn't use it.

474 49. Q. If you didn't use that central mixing plant, how were you going to handle all your concrete in its production?

A. Concrete from the central mixing plant, it was possible, either to take a batch that had not been wet, or try to get it from the central mixing plant. And we did, we put it in the mixer, and put it in the chute and diverted it direct to the truck; the truck drove up to the paver and dumped it in the skip and it was charged in the mixer there where the water would be.

50. Q. That is what you called a "dry batch"?

A. Yes, called a dry batch; that is the method used in most of the highway work.

51. Q. In which parts was it better to use the dry batch or the mixture?

A. On a smaller building, where it didn't pay to set up a hopper, and have a means of dumping the wet batch into the hopper for conveying it into the buggies to take to the building, it was better to use the dry batch method with the paving mixer.

52. Q. Well, was the result in keeping with the contract and the specifications?

A. Yes, sir.

53. Q. In either instance?

A. In either instance, it was entirely within the contract, 475 and entirely within the standards of good practice.

54. Q. Did Captain Feltham tell you that he had changed his mind about it?

A. No, sir.

55. Q. He just ordered you to do it?

A. He just made the statement that in the future, all concrete shall be delivered from the central mixing plant.

56. Q. Now, did that entail another trip to Washington?

A. Yes, sir.

57. Q. With what result?

A. With the result that we were instructed to use the other mixer on outlying or smaller buildings; in other words, I would say that it was sort of a compromise, giving us permission to go on and use it, without making it too direct against their construction engineer.

58. Q. As a matter of fact, Captain Feltham was reversed?

A. He was reversed in it; yes, sir.

59. Q. On that proposition?

A. Yes, sir.

60. Q. Was that one of the things for which you were sent to Washington—to Roanoke?

A. That was typical.

61. Q. What was the next thing that you found to be—that required your attention and diplomacy?

A. We were called into Washington for a conference, I might say; Mr. Roberts, Captain Feltham, and myself.

476 62. Q. Who called you?

A. Colonel Tripp. Generally speaking, Colonel Tripp, Major Price, or—

Q. Tolbert?

A. Yes; Tolbert, some technical matters would be taken up with him, but that was not controversial matters, just simply gave his approval.

63. Q. Did Captain Feltham and Mr. Dodd go with you?

A. One time, three of them was in; at this conference or round table conference, we were—

64. Q. At all of them?

A. Well, a great many of them.

65. Q. Well, there were a great many, were there?

A. Yes, sir.

66. Q. And were all those matters laid before Colonel Tripp or his staff in Washington?

A. It was almost impossible to lay them all before him at one time. I think all the major matters, and some minor ones, to show the general undercurrent. I don't say all the matters were laid before Colonel Tripp, I think that would be stretching it a little, because that would take most all of his time to have heard them.

67. Q. Well, you have covered the mixing plant very well. What is the next thing you had to take up in Washington?

477 A. Well, we were in there discussing the labor situation. There was a number of cases where men were required to be removed from the work, for one technical reason or another, and, under the employment law, there were cases where we were required to work men that were not competent, in our opinion, and they wanted a further trial, and those things were discussed, and the mixer problems were discussed.

68. Q. In regard to those laborers that you speak of, do you mean to say that Captain Feltham had just arbitrarily ordered you to discharge certain men?

A. Certain of the leading men; yes, sir. John Clenney was one.

By the COMMISSIONER:

69. Q. Was he justified, in your opinion, based on the requirements?

A. On a job such as that, there certainly was a need for men, not only experienced in the line of work, but men who were experienced in work with the Blair organization. You couldn't take a new crew and undertake to build a building, on such an undertaking as that was.

By Mr. BALL:

70. Q. Where did you get these laborers?

A. I am not speaking of the laborers, I am speaking of
478 men higher than laborers. They were entirely from the Blair organization.

71. Q. Oh, the men he objected to were of the Blair organization. And did he leave Roanoke?

A. That's right.

72. Q. In this instance, Clenney?

A. Clenney was the first one.

73. Q. And Pilant?

A. That's right.

74. Q. And J. T. Roberts, he was one of the superintendents?

A. I don't think he took direct exception to J. T.

75. Q. Now, there was some other one, Shepherd, and a Mr. Moore?

A. Mr. Moore was one of the sore spots.

76. You mean to say that Captain Feltham objected to members of the Blair organization who were over there from Montgomery, and who had been working with him for years?

A. Yes, sir.

77. Q. Was it his contention that he couldn't use them, but had to get them from the Employment Bureau at Roanoke?

A. Yes, sir.

78. Q. Well, what was the result of your controversy about that? Was it taken to Washington and threshed out?

A. Some of them, in an effort to pacify Captain Feltham,
479 were passed over, and he was given his way. In a few instances, they were taken to Washington, which was never satisfactorily threshed out.

By the COMMISSIONER:

79. Q. What was his objection to the men of the management that he was asking to have discharged?

A. Technically, because we were required to employ our men from the employment bureau—other objection I couldn't say.

80. Q. There was no objection to their efficiency and qualifications?

A. I couldn't say.

81. Q. Did you hear any?

A. No, sir.

By Mr. BALL:

82. Q. Well, were those men, men that had been with the Blair organization for a long time—most of them?

A. Yes, sir.

83. Q. Their services were satisfactory?

A. They were considered so satisfactory that we desired them on the job.

84. Q. Now, did you mean, they were desired at the job by the superintendent?

A. Yes, sir.

85. Q. And necessary to the efficient performance of the contract?

A. They could do good, satisfactory work, I know.

86. Q. Did Mr. Blair send there any of what we might call laborers?

A. Common laborers?—No, sir.

480 87. Q. Where were they obtained?

A. Obtained in their local employment agency, their local office—sufficient just common labor was available.

88. Q. Now, while you were there, was that being done through the Employment Bureau of Roanoke?

A. Yes, sir.

89. Q. Do you know whether proper use—do you know whether or not attention was given to the fact that ex-service men were entitled to a preference in the work?

A. That was up to the employment bureau.

90. Q. Well, was this class of employees that were obtained exclusively, as far as possible, from the employment bureau?

A. To the best of my judgment, they were obtained exclusively from the employment bureau.

91. Q. Now, did Captain Feltham or Mr. Dodd interfere, and was that especially with reference to, interfering with men who were sent there by the employment bureau?

A. In some few instances.

92. Q. What did he object to or about?

A. He objected that we had used two or three of the employment bureau on cards of certain men.

93. Q. Had you?

A. I expect there were, because when some individual employed on the job asked somebody to give him a card I would
481 say yes; no doubt there would be men in such work.

94. Q. With a recommendation?

A. It was a request, not a demand.

95. Q. Do you know who prepared them?

A. We had no means of telling.

96. Q. But in reporting, they had cards with an indorsement on the back of them?

A. Yes, sir.

By the COMMISSIONER:

97. Q. Immediately under the indorsement, was what?

A. They wanted to be reported back, and set a date, requesting that they be given a second chance.

By Mr. BALL:

98. Q. Was that after they had been discharged or rejected?

A. Yes, sir—after they had been tried and found unsatisfactory.

By the COMMISSIONER:

99. Q. Did they get a second chance?

A. Yes, sir.

100. Q. Did they make good, or not?

A. Generally speaking, I would say not.

By Mr. BALL:

101. Q. Do you know of any instance where Mr. Roberts or anyone in charge, willfully or voluntarily violated the requirement with reference to obtaining labor through the Roanoke Employment Bureau?

482 A. No, sir; we were under such pressure that we were scrupulously careful to try to comply with their every desire.

102. Q. Well, now, did you ever take that up with Washington for discussion?

A. We discussed it in Washington, a number of those problems.

103. Q. Were they solved?

A. Never to the entire satisfaction—they were sort of “slushed over,” I would express it.

104. Q. Now, do you recall anything else that you had to take to Washington for discussion? How about the use of the intermediate grade or class of laborer?

A. That was contended for throughout the job, but was never granted.

105. Q. Will you just explain what you mean by that “it was contended for”?

A. We contended that we had the right to work apprentices, apprentice carpenters, on rough form work and scaffold-building, and that we had the right to work a certain percentage of brick mason apprentices, backing up work; but it was claimed down there that a man had to be either a mechanic or a laborer.

106. Q. And must be paid either 45¢ or \$1.10 an hour?

A. 45¢ or \$1.10.

483 107. Q. If he was not a laborer, then, what was he?

A. He was either skilled or unskilled. If he was skilled, it was \$1.10, if he was unskilled, it was 45¢.

108. Q. Do you mean to say that Captain Feltham took that position and gave orders that you must not recognize apprentices and helpers and intermediate grades?

A. He made the classifications, that is strictly true. One direct evidence of that was the reinforcing scale.

109. Q. I will ask you about the reinforcing scale as it was applied—explain how it was?

A. Reinforcing steel, in that kind of a job, there were no steel men available—there are very few rodmen available anywhere.

110. Q. Did you make application to the Bureau?

A. Yes, sir. They said they had none. We started out there using some of the better, more intelligent laborers, and paying them sixty cents. This seemed satisfactory for awhile. And then after awhile it was stopped with that order to pay them \$1.10. In one order you pay them this, and another order to put them back up. Apparently, there was nothing else to do but to put them back up, which was done to my personal knowledge.

111. Q. In that connection, did you carry that to Washington for discussion with Colonel Tripp?

484 A. Yes, sir; it was never satisfactorily settled.

112. Q. State whether or not you laid the whole situation before him there at Washington?

A. Yes, sir.

113. Q. Who was there, present at the time?

A. Mr. Roberts, Captain Feltham and myself were present at one of the discussions.

114. Q. Well, what was the substance of the contentions there?

A. That in that instance I would say that Captain Feltham was given a back decision.

115. Q. Well, his contention, and if I state anything incorrectly you correct me, Captain Feltham's contention in Washington was that you would not, in any instance recognize any intermediate class of average skilled wage?

A. That's right.

116. Q. Either on the reinforced steel, or on the carpenter work, on the backing up of the brickwork, or anything else on the job?

A. That's right.

By the COMMISSIONER:

117. Q. Colonel Tripp supported him in that?

A. Yes, sir.

485 118. Q. Did Colonel Tripp state that he took the position, without any authority for it, or anything, nothing except—

A. That we had two rates specified—had no intermediate rate specified.

119. Q. And without coming up in the rulings of the Labor Department, or anything?

A. We raised the point on the PWA pamphlet, that intermediate classifications, assistants, and so forth, were not to be discriminated against.

120. Q. What did Colonel Tripp say about that?

A. I don't recall, but I do recall that we were overruled—our contention wasn't granted.

121. Q. He did not try to reconcile the view of these parties?

486 . A. I don't recall.

122. Q. Well, you were there in a dual capacity, sort of secondarily and sort of primarily.

By Mr. BALL:

123. Q. Well, did you lay before Colonel Tripp the situation with reference to handling the reinforcing steel rods, and how you undertook to do?

A. Yes, sir.

124. Q. And he didn't think you had the right to do it?

A. Yes, sir.

125. Q. Well, just what was stated, briefly, up there?

A. That the foreman is the principal of that reinforced steel crew, he is the man that has the blueprint, that the man who is placing the reinforcing steel is told to take "Bar No. 29," which he does, and he takes the steel, and he places that steel in there, and then it is set up, it takes no great amount of skill, because he is under constant supervision of a man who has technical knowledge, and belongs to what would be other than absolutely secondary and semiskilled occupations.

126. Q. Well, would you call a common laborer—which term I don't endorse very much—be employed to do anything more than to bring the steel rods to the vicinity of the place where they were to be put?

487 A. I can't say. If he has intelligence enough to pile it up on top of the building, I would think he had intelligence enough to carry it over and put it down here.

127. Q. In the place where it is to be tied?

A. Yes, sir.

128. Q. Were you permitted to do that?

A. No, sir. When we did that, and permit him to bring steel onto the slab, he is a common laborer, but if he is permitted to

lay it down up there within that distance of where it is to be laid, he is a \$1.10 man.

129. Q. Now, you had these steel plans?

A. Oh, yes.

130. Q. Before the concrete was poured, he might allow a common laborer to operate up there, and place it in that place, but he must be off to one side?

A. Yes, sir; that's right.

131. Q. Then his duties terminated, under Captain Feltham's ruling?

A. Yes, sir.

132. Q. Then, under his ruling, you had to have a mechanic at \$1.10 an hour, a man to pick that up and put it down where it was to be used? Is that right?

A. That's right; entirely.

488 133. Q. These rods all had to be tied with wire?

A. Yes, sir.

134. Q. And Captain Feltham's ruling required that that should be done, also, by a mechanic or skilled man?

A. Yes, sir.

135. Q. And he also required, and required, in writing, didn't he, that they be paid \$1.10 an hour?

A. That's right.

136. Q. And that was all discussed in Washington, and they decided that his ruling should be upheld?

A. Yes, sir.

By the COMMISSIONER:

137. Q. Did he claim up in Washington what sort of laborer it was that should have removed the boulder that fell into the public highway, in hauling the stone work?

A. He had to be a relief man.

138. Q. He naturally would be a relief man, but what classification?

A. He would be unskilled.

By Mr. BALL:

139. Q. Well you said there was an instance?

489 A. There was an instance that I am familiar with, but I don't remember about it except secondarily, in which one contractor who was hauling stone, removed a boulder from the road, so his truck tires wouldn't be smashed with it, and we were severely criticized for it.

140. Q. Did Captain Feltham criticize you?

A. Yes, sir.

141. Q. What did he say should have been done?

A. That we should have gone across the field and got a laborer, hauled him over there, and had him to pick it up.

142. Q. How large a stone was that?

A. I would say about nine inches, as near as I recall. I saw the stone. It might weigh about twenty pounds.

143. Q. Weigh twenty pounds or so?

A. Fifteen or twenty pounds.

144. Q. How far did it have to be removed?

A. Oh, probably, eight feet, at the worst.

145. Q. Just to get it out of the roadway?

A. Out of the traffic on the roadway, so they wouldn't break a differential on it.

146. Q. That didn't go up there to Washington?

A. I think it was mentioned. In leaving he said it was carrying it slightly to an extreme. I think, if I recall, Colonel Tripp simply said he agreed with me, and nothing came of it.

490 147. Q. How did it come that you were required to go to Washington and Roanoke? As I understand your testimony, you were sent by Mr. Blair up there as a harmonizer, to try to go back and forth between Roanoke and Washington and discuss all these matters, so that he wouldn't have to do it? Is that right?

A. Yes, sir.

148. Q. Did Mr. Ellingsworth go there, also?

A. Mr. Ellingsworth's duties there was trying to work out the structural difficulties, smooth out the difficulties involving the metal pans and reinforcing, and that sort of thing. Of course, anything else he could help out with up there.

149. Q. In what department was he considered to be dealing?

A. In the structural engineering.

150. Q. Then, has that any connection with the boiler?

A. No. By structural engineering, I mean all classes of structural-steel construction, concrete and steel construction—he is one of the best in Alabama—certainly on reinforced concrete.

151. Q. He is a Blair organization man?

A. Yes, sir.

152. Q. How long did he stay there?

A. He was there about four or five months.

491 153. Q. Did he go to Washington to discuss any of these matters with you?

A. He never went with me. I think he went to Washington, but not at the time I was there.

154. Q. With reference to the problems on the job?

A. Yes, sir.

155. Q. What other matters came up there, that you thought needed attention, and which you submitted to Washington?

A. The matter of delay of structural steel on the boilerhouse. I was in Washington several times in that connection, to get a decision, and never was successful in getting it until after the Virginia Engineering Company took over the work.

156. Q. From whom did you try to get the decision on that?

A. Colonel Tripp, or somebody else I was referred to as the head of the engineering department there.

157. Q. What was the trouble.

A. The trouble was that they couldn't get certain information as to the coal-conveying equipment.

158. Q. That had to come from whom?

A. From the mechanical equipment man—contractor.

159. Q. That was the Redmon Heating Company?

A. That was Redmon at that time.

160. Q. Well, you say you took that up with them in Washington, and what resulted?

492 A. That they couldn't answer me until they got the drawings on it from the mechanical contractor.

161. Q. Did they say, in substance, to you that the mechanical contractor had failed to give them the shop plans, or the information necessary?

A. Yes, sir.

162. Q. Did they ever get them?

A. They said they never.

163. Q. What did they say about their efforts to get it?

A. That they had tried to get it and hadn't been able to get the details from Redmon.

164. Q. That was without, or with, special reference to the boilerhouse?

A. To the boilerhouse.

165. Q. Were there any other things in connection with Redmon that you discussed?

A. I made one special trip to Washington about the time Redmon's contract was terminated, in an effort to try to be of service to the Veterans' Bureau, in any way possible, in trying to clear the mechanical situation on the job.

166. Q. Had Washington, or Colonel Tripp, or anyone else in the Department discussed with you, the delays of the mechanical contractor, Redmon?

A. Oh, yes; we talked about that at frequent times. In
493 other words, it was a constant subject of protest on our part.

167. Q. And what was the attitude of the Veterans' Administration?

A. That they were doing everything they could to make him do something.

168. Q. They admitted, I presume, that they knew he was delaying the whole job?

A. I won't say that, that they admitted—they kept saying they were doing all they could to make him do better.

169. Q. Do you know whether they had a schedule of the progress laid out by Redmon, did you ever—

A. By Redmon?

170. Q. Yes?

A. I never saw one.

171. Q. Did they ever discuss his progress schedule, at all?

A. The only progress schedule they discussed was out own—that he was under contract duty bound to comply.

172. Q. Do you know whether they had in Washington a copy of the progress schedule of Mr. Blair, which was—

A. I couldn't say.

173. Q. Did they, or not, discuss it there?

A. I know that they had knowledge of it. I am sure I had one of them with me, and we discussed it. As to whether they had one on file, or not, I couldn't say.

494 174. Q. Did you have the blueprint schedule?

A. Yes, sir.

175. Q. Did you Exhibit it to Colonel Tripp in Washington?

A. Yes, sir.

176. Q. That was the blueprint that was sent to the job in Roanoke?

A. It was the same one.

177. Q. In February—or March, rather—the same schedule that they had posted on the job?

178. Q. The same schedule that they had posted on the job, and I am quite sure that we had that posted also in Redmon's office.

179. Q. Did you have any conversation at any of those interviews in Washington with reference to the Redmon contract, as to whether they expected it to be finished, or nor?

A. I always insisted that they never intended to finish it.

180. Q. You insisted?

A. Yes, sir.

181. Q. But what did Colonel Tripp say?

A. That he was doing everything he could to get action on the job.

182. Q. Did he say whether they intended to terminate it or drop it for nonperformance, at that time?

A. No, sir.

495 183. Q. These interviews in Washington, in reference to Redmon—was Captain Feltham present?

A. No, sir.

184. Q. Or Mr. Dodd?

A. No, sir.

185. Q. But you did have conversations with them about it on the job?

A. Yes, sir—oh, yes, almost constantly. It was a constant controversial item.

By the COMMISSIONER:

186. Q. Did you ever meet in Washington with Colonel Tripp when any representatives of the Redmon Heating Company were there?

A. No, sir.

187. Q. Did you ever try to get the Redmon people with you at Washington?

A. No, sir.

By Mr. BALL:

188. Q. Did Redmon have a real representative there except Mr. White, who went there on March 19th?

A. That is the only one I ever knew.

189. Q. Now, what did Mr. White say with reference to the probability of Redmon completing his job?

A. Mr. White had made the statement several times to me that he was doing the best he could.

496 190. Q. Yes?

A. He would never make a statement that they didn't expect to finish the job.

By Mr. BALL:

195. Q. Now, when you presented these matters in Washington, did Colonel Tripp, or anyone else, ever refuse to consider them because they were not in writing?

A. No, sir.

196. Q. State whether or not any proposition that you took to them up there, they refused to consider and pass on?

A. I have been—I had been, at that time, doing business with Colonel Tripp, for eight or ten years, and I never had him refuse to give me satisfaction on anything we took to him.

197. Q. Did he ever suggest to you that you could take an appeal from his rulings?

A. No, sir.

198. Q. What was Colonel Tripp's attitude, in short, in regard to the whole proposition?

A. Colonel Tripp's attitude, as always has been, was most helpful in this instance. I would say that his attitude was much that

I just wish I knew how I could help you, I appreciate the situation, I wish there was something I could do, to give you relief, but my hands are tied. It wasn't stated that way, but that is what it meant. That was particularly so on the morning that I took a newspaper article in there, wherein it stated that we were having labor troubles, and he apologized for it.

199. Q. From your experience with Colonel Tripp in regard to these matters, would it have availed anything to take any appeals to any other department?

A. In my experience, I know of no appeal that could be taken.

200. Q. Well, from all of your experience, do you know of any way that any appeal might have been taken in writing from his ruling, with the hope that you could reverse it?

A. As far as I was concerned, he was the head of the construction department, and I knew of no appeal; in other words, the only appeal that I knew of that could have been taken from his ruling would have been to General Hines, who was his immediate superior, and who would have to be governed by Colonel Tripp's advice.

Cross-examination by Mr. WATSON:

201. Q. Mr. Andrew, all these trips to Roanoke were at the instigation of Mr. Blair?

A. Except the one.

202. Q. Which one was that?

A. That was the one in which Mr. Roberts and myself all went to Washington.

498 203. Q. Who called you then?

A. Colonel Tripp, who suggested that we have a round-table meeting.

204. Q. On that trip, you were in the capacity of an ambassador between Mr. Blair, and Captain Feltham and Mr. Dodd, and what were the results of your mission?

A. We did receive permission to use the paving mixer, and I think we relieved the tension somewhat, that was existing at that time.

205. Q. Where were you when you were called to Washington by Colonel Tripp?

A. I was in Montgomery.

206. Q. On these other trips that you made to Washington, did you complain to Colonel Tripp about the alleged arbitrary, unreasonable, and unfair attitude of Captain Feltham and Mr. Dodd?

A. Yes, sir; frequently.

207. Q. What was his decision?

A. I don't think I ever got a decision, other than "I will do what I can for you;" in other words, we seldom get a positive and definite decision from Colonel Tripp. He always took the attitude that he

wanted to help us, but he just didn't know how, under the circumstances.

208. Q. In other words, he neither sustained nor overruled Captain Feltham?

A. Practically without exception; it might be, a compromise of his.

209. Q. Did you appeal to Colonel Tripp about these alleged labor difficulties you were having on the job?

A. Yes, sir.

210. Q. And what did he do in that regard?

A. The same attitude. We got no direct relief; but, maybe, a little easing of the tension.

211. Q. Now, tell us what set of scale, or what set of wages, did you use on this contract, the contract scale or the scale set by the State of Virginia?

A. What did you call it, that was on the contract, you say it was?

212. Q. Yes?

A. 45¢ and \$1.10.

213. Q. You didn't adopt the State of Virginia scale, the local scale under the PWA?

A. We weren't permitted to.

214. Q. Now, to your knowledge, Mr. Andrew, was there an appeal ever made to the Veterans' Administration about the labor—involving this labor question, to the Labor Board of Review?

A. Appeal was made to the Veterans' Administration, because I made several appeals.

215. Q. But no appeal was ever made to the Board of Labor Review?

A. I couldn't say.

216. Q. I believe you testified that you had never taken an appeal to General Hines?

A. No, sir.

500-501 Mr. KILPATRICK. We offer in evidence photostat copies of correspondence between the Veterans' Administration and the Redmon Heating Company furnished to the Court in response to the call.

The COMMISSIONER. And the Government objects, and I overrule the objection, and the exception is noted. Marked "Plaintiff's Exhibit No. 42" (marked).

JOHN T. CLARKE, a witness produced on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. BALL

By the COMMISSIONER:

1. Q. Give us your full name, please?

A. John T. Clarke.

2. Q. Your age?

A. Forty-eight.

3. Q. Your residence?

A. Montgomery, Alabama.

4. Q. Your occupation?

A. Manager for Mr. Algernon Blair.

502

By Mr. BALL:

5. Q. Mr. Clarke, state the education, training and experience you have had in connection with the contracting business; on contracts such as are involved in this case.

A. I graduated from Georgia Tech, in 1911, with the degree of Bachelor of Science in Architecture, after which I spent about eighteen months as an architectural draftsman in the offices of two different architects. Then, as the result of a civil service examination, I was appointed architectural draftsman in the office of the Supervising Architect of the Treasury Department, and served therefor a year and eight months. Then, as the result of another civil service examination, I was appointed computer and estimator and specification writer, and was assigned as assistant to the chief of the construction division. He handled all of the field forces, assigned the field forces, received their reports, and handled, with the contractors, all of the correspondence and problems developed during the construction of Federal buildings. I served there only six or seven months, and was then sent into the field as Superintendent of Construction for the Government, having charge, first, of the supervision of construction of the postoffice and Federal court house at Jackson, Kentucky. From there, I went to Minden, Louisiana, and supervised the construction of a small postoffice building, on which Mr. Blair was the contractor,

503 and that was my first personal contact with him. From there, I was assigned to Hammond, Louisiana, and McComb, Mississippi, with headquarters at Hammond, supervising the construction of the two postoffice buildings, traveling back and forth between them. From there I was moved to Forsyth, Georgia, and given two buildings, again, Barnesville, Georgia, and Forsyth. I had only been there two or three months when I went into the Army, and served for about sixteen months, after being discharged, I was commissioned as a Captain in the Engineer Reserve Corps. During the last half of my service, I was appointed to the Engineers' School Detachment at Fort Humphries, Virginia.

6. Q. In what sort of capacity, and for what purpose?

A. Preparing diagrams and other data for courses of instruction in this newly organized engineering school for the Army officers who had already been graduated from West Point. I then

returned to the Government service, and was loaned to the Public Health Service by the supervising architect, and supervised some small work in Washington for a period of three or four months. After which, I received a letter from Mr. Blair offering me a position here, and I resigned from the Government service on October 15, 1919, which was my thirtieth birthday, and came to work with Mr. Blair, here. From the beginning, I have had charge of the work in the Montgomery office, estimating, detailing, visiting the various jobs, supervising the work, and generally doing all things necessary for such a position.

504 7. Q. During the time you were with Mr. Blair and have been with Mr. Blair, what large contracts have you had supervision of? Name a few of them, at any rate.

A. A million-dollar cotton mill at Porterdale, Georgia. A million-dollar Veterans Hospital at—oh, pshaw, I can't call the name, in Ohio—

8. Q. Dayton?

A. Dayton, Ohio. Groups of hospital buildings, ranging up from 250,000 to \$2,750,000, at Gulfport, Mississippi, Biloxi, Mississippi, Tuskegee, Alabama, Northport, New York, Perry Point, Maryland, Oteen, North Carolina, Atlanta, Georgia, Roanoke, Virginia; also others; and a large number of postoffice buildings, including the building we are now in, which cost some \$720,000.00, and on which I had daily contact, including the postoffice and court house building at Jacksonville, Florida, costing about a million and a quarter.

9. Q. Did you mention Atlanta?

The COMMISSIONER. Yes, sir.

A. Yes, sir.

By Mr. BALL:

10. Q. Now, did you make any of the estimates of any of these later jobs for Mr. Blair?

A. I had supervision of the making of the estimates on practically all of them.

11. Q. How did your performance correspond with your estimates on jobs such as that Roanoke job?

505 A. In every case, the estimated cost proved to be very close to the actual cost, and in every case, except in the case of Roanoke, the jobs proved to be successful.

12. Q. In connection with that, did you make the preliminary progress sheets, and estimate the time within which you would complete?

A. Yes.

13. Q. How did they correspond with the performance?

A. In every case we completed with the time estimated, except, possibly, in some minor detail.

By the COMMISSIONER:

14. Q. You were never assessed liquidated damages on any of them?

A. No, sir; except—

15. Q. That is the matter that Mr. Blair spoke of?

A. Yes, sir.

16. Q. Aside from that, no others?

A. No, sir.

By Mr. BALL:

17. Q. Now, on any of these jobs, have you, or Mr. Blair, ever lost money?

A. No, sir.

18. Q. Except the Roanoke job, of course?

A. No, sir.

19. Q. I show you here a blueprint, and ask you whether you prepared that, or the original of it?

A. I did.

20. Q. Showing the progress curves of the several buildings?

506 A. I did.

21. Q. Is that an accurate representation of the names, cost, time of completion and progress on the various jobs, including Roanoke?

A. It is accurate as to the names and cost, and curves of progress are computed from the actual Government progress, reports and payments to us month by month on the respective jobs [the blueprint, Exhibit 43, shown to Mr. Watson].

Mr. WATSON. Are you going to introduce it?

Mr. BALL. Yes, sir.

The COMMISSIONER. Plaintiff's No. 43 (marked).

By Mr. BALL:

22. Q. State whether or not it is customary for contractors, especially Mr. Blair's organization, to have a curve of progress made like that?

A. Quite customary.

23. Q. What is the object of that, primarily?

A. To show the progress being made. At times, we have had a chart posted on the wall in the office, with a number of jobs platted on there as they progress each month.

By the COMMISSIONER:

24. Q. That is a common practice in the construction branch of the work, isn't it?

A. I think so.

By Mr. BALL:

25. Q. Did you ever see such a curve of Redmon's on this Roanoke job?

A. No, sir.

507 26. Q. Did you ever see a progress sheet from him?

A. No, sir.

27. Q. Now, in making up your bid; who made up the estimated cost of the various parts of the things necessary for the performance of this contract?

A. Redmon's contract or Blair's?

28. Q. This contract?

A. A number of estimators in our office, Frank McFaden taking the lead. May I refer to a memorandum here made by me?

29. Q. Do you know it is correct?

A. Yes, sir.

30. Q. All right.

A. Frank McFaden, assisted by Charles Voltz handled the quantities on Buildings 2, 13, 14, 15, 16, 23, and the corridors between Buildings 2 and 4, and the steam tunnels between Buildings 13, 14, and 4. L. C. Palmer, assisted by W. A. Cobbs, and at times by two ladies in the office, who did some of the extending of quantities, took off, made the quantity survey on Buildings Numbers 1, 6 and 7, and the corridors from 4 to 6, and 6 to 7. E. F. Higginbotham, assisted part of the time by the same two ladies, handled buildings 5, 17, 18, and 19, and the corridors from 5 to 6. J. E. Lacey made the quantity survey on Building No. 4, and on all of the outside work, that is, the roads, walks, grading, 508-509 and so forth. W. M. Ellingsworth handled all items of reinforcing steel, steel forms, and steel windows. I prepared all of the unit prices personally, made up the overhead sheet, and supervised the pricing of all items of the estimate, summarized all of the figures, and reviewed the estimate with Mr. Blair, before the bid was made.

31. Q. Was it approved by Mr. Blair?

A. It was.

32. Q. Both of you—did both of you give it thorough examination, after it was compiled by these different men?

A. We certainly did.

33. Q. State whether or not these men who assisted were experienced and qualified in that sort of work?

A. Yes.

34. Q. Had they—

A. Well qualified.

35. Q. Had they done similar work in Mr. Blair's organization which had proved accurate?

A. Many times.

36. Q. Now, in the course of your work on that, I will ask you if you sent this letter of September 4, 1933, to the Secretary of the Interior, and received the reply which is attached to it [shown to Mr. Watson]?

Mr. WATSON. No objection; subject to verification.

Mr. BALL. Yes.

The COMMISSIONER. That is a reply to Mr. Blair from the Interior Department.

A. I did.

Mr. BALL. We offer the two letters—three sheets.

The COMMISSIONER. Mark it Plaintiff's Exhibit 44.

By Mr. BALL:

37. Q. Do you have an instance, in connection with your estimates, to show your estimated quantity was accurate, or not, based on your experience?

A. Yes, sir.

38. Q. Well, just state what it is?

510 A. Our estimate called for 1,297,000, plus, of brock, face brick. We actually had to buy 1,299,000, plus, face brick, or within $\frac{1}{16}$ th of 1% of being correct. On the common brick we were within $\frac{1}{16}$ th of 1% of having estimated the quantity.

39. Q. After you made up your estimates, was it rechecked, and did you send to the Veterans Administration in almost summary form of your work? Maybe, I don't get the correct setting of that matter.

A. The schedule of the cost of each branch of the work, on each building, to be used by the Government as a basis for making payments, monthly payments to us as the work progressed.

40. Q. That was sent to whom?

A. That was sent through Captain Feltham, to the Veterans Administration, and approved by them.

41. Q. And, of course, in doing this, you studied the plans and specifications which were furnished by the Government?

A. Diligently.

42. Q. I will ask you, was there a large amount of work to done in Mr. Blair's home, or central office, in connection with the performance of this Roanoke contract?

A. Yes, sir.

43. Q. Running through the whole time it was in process of execution?

A. A tremendous amount.

511 44. Q. Do you have records in your office showing what those costs are or were?

A. We have records showing all of our overhead costs for the Montgomery office, and the expense of the Montgomery office during that entire time.

45. Q. I will ask you if you had in that office sufficient men of experience and proper qualifications to carry on that work throughout the entirety, operating without delay to anybody?

A. We did.

46. Q. Did you make an estimate of the length of time within which you could and intended to perform that contract?

A. It was very necessary to do so in preparing our estimate.

47. Q. Did you base your salaries on a certain number of months?

A. We did.

48. Q. How many?

A. Ten.

49. Q. Ten months?

A. Yes. Ten months was the longest salary that we included in our field overhead. Where we planned for certain superintendence of the large buildings. Some of the smaller buildings, we included their salaries for only six or seven or eight months, as the case might be; but we included the salary of C. W. Roberts, as general superintendent, for a period of ten months.

512 50. Q. Within what time, then, did you calculate that you could build that job; complete it?

A. Within ten months from the time we started work.

51. Q. You calculated that you could have done it within that time?

A. Yes.

52. Q. Could you have done it within that time?

A. If we had had no interference, we could.

53. Q. And would you have done it?

A. We would.

54. Q. You say that, based on your former experience in such matters in Mr. Blair's contracts?

A. I do, and as proven by executing many similar contracts.

55. Q. As a matter of fact, it was not completed until February 14, 1935?

A. That is correct.

56. Q. Now, from whatever you have of personal knowledge, what prevented the completion within the stipulated time, or the completion plan that you had of ten months?

A. From the beginning, almost, we were delayed in securing information from the Redmon Heating Company, which it was necessary for us to have in order to design and fabricate certain parts of our work, notably, the structural steel in the boilerhouse, to which much of his mechanical equipment had to be suspended, or from which it had to be suspended. The information regarding radiators under windows, which it was necessary for us to have that data on those radiators before we could properly design the radiator recesses to receive them.

513

Mr. WATSON. We object to that and move that the answer be stricken out, as to the Redmon contract.

The COMMISSIONER. Overrule the objection, you have exception.

Mr. WATSON. Note my exception.

By Mr. BALL:

57. Q. Will you go on and explain that further, with reference to Modene, and so on?

A. We asked the Redmon Heating Company for a schedule of all these radiators. He was somewhat late in buying them from the Modene Manufacturing Company. They did make up a schedule and send to him, and he submitted it to the Veterans' Administration for approval, and it was approved, and we asked him then for a copy, to let us have it, and he told us he didn't have extra copies, we would have to get them from Modene. We communicated with Modene and did get a copy of the schedules, and we began checking and found immediately that there were a tremendous number of errors in the schedules, in that the radiators as listed required recesses much longer than the width of the window under which they were to be located, whereas the specifications required that the radiators should be not longer than the width of the window under which they were located.

58. Q. Now, whose mistakes were those that you speak about, about putting in this combination?

514 A. They were Modene's mistakes, that is, originally, and whoever handled it at the Veteran's Administration had failed to catch them, in approving this schedule.

59. Q. Then, after they came to you, you discovered the error? Is that it?

A. Yes, sir.

60. Q. All right, go ahead.

A. It was due to a misunderstanding by Modene of the details on the Government drawings.

61. Q. All right.

A. We figured out how, where Modene had put a two-column radiator, as shown, we could have him change it to a three-column radiator, and come within the width of the window; or where they had a two-column or a one-column radiator, we could change it to two or three columns and come within the length. After correcting the schedule, we then sent it back to Modene and asked them to make it—asked them—to make the necessary changes in order to come within the width of the windows. They did so, and sent us a revised schedule, which we proceeded to use, and for which we were very much criticized because we had failed to have the schedule submitted to the Veteran's Administration, and

again let them approve it, before we went ahead and put in the radiator recesses.

62. Q. Criticized by whom?

515 A. Captain Feltham, and he reported to Washington, and they criticized us, and Mr. Andrew went to Washington and explained the entire situation, after which they expressed appreciation for what we had done.

63. Q. At that point, will you tell us the connection of Mr. Andrew and Mr. Ellingsworth with this contract, and why they were sent to Roanoke, when they were not included in the original personnel of the job, just briefly?

A. Almost from the beginning, Captain Feltham and Mr. Dodd made so many arbitrary and unfair rulings in connection with almost every detail of the work, and there was so much friction and confusion on the job, that it was necessary to send Mr. Andrew, one or twice to Washington where he was well acquainted with the Veteran's Administration officials.

And, finally, it was necessary for us to send Mr. Andrew to stay and spend all of his time at Roanoke, and travel back and forth between Roanoke and Washington, in order to compose all these conditions.

64. Q. You say it was deemed so by whom?

A. Mr. Roberts urged Mr. Blair to send him, and Mr. Blair felt that it was necessary to send him, and we did send him.

65. Q. Was Mr. Blair informed by you, and from the
516 correspondence of Mr. Roberts, of what was going on up there?

A. He was.

66. Q. Did you concur in his judgment?

A. I certainly did.

67. Q. In sending Mr. Andrew there?

A. Yes, sir.

68. Q. How about Mr. Ellingsworth?

A. We felt like it was necessary for him to go, too, particularly in connection with the problems that had developed through unreasonable rulings of Captain Feltham in connection with reinforcing steel and form work, on which Mr. Ellingsworth was an expert.

69. Q. Have you in your office accurate records of the time spent by each of them, and the expense, and the things of that sort, in that connection?

A. We have.

70. Q. You have compiled them for the purpose of presenting them here, and you have a full summary of the detail of the cost in connection with traveling expense accounts and their expenses?

A. Yes, sir.

Mr. KILPATRICK. You are familiar with the detail of the claims advanced in the petition filed in this case?

517 A. I am.

71. Q. I will ask you if you have prepared or had prepared under your supervision, a tabulation of the overhead expenses at Roanoke for the three and a half months that you claim to have been delayed on this job?

A. I did.

72. Q. Is that [showing paper] the tabulation?

A. It is.

73. Q. As taken from the figures on your books?

A. It is.

74. Q. You know those to be the salaries of the individuals mentioned?

A. I do.

75. Q. It is a correct and true statement?

A. It is.

Mr. KILPATRICK. We offer this, consisting of two sheets.

The COMMISSIONER. Plaintiff's Exhibit 45. Two sheets, is that right (marked)?

Mr. KILPATRICK. Yes, sir. That is 45, Roanoke overhead.

76. Q. Now, Mr. Clarke, were the salaries paid the various officials set out in the petitions and Exhibit 45, reasonable salaries for the work they were doing there?

A. Yes, sir.

77. Q. I notice that the last item on the first sheet is rental value or depreciation on equipment, tools, and so forth, is \$2,805.00, and, apparently, the second sheet is a detail of that item: is that correct?

518 A. That is correct. In addition to these items of large equipment, we had a very large amount of small equipment there on which we made no effort to charge any rental in these figures.

78. Q. In your opinion, are the monthly rental values set out in the tabulation on page 2 of Plaintiff's Exhibit 45, reasonable rental values?

A. They are very reasonable. In fact, when we do rent equipment, we usually have to pay prices considerably above those.

79. Q. Have you prepared a similar statement of the home office overhead which you claim is chargeable to this job, for the same three and a half months period?

A. I have.

80. Q. Is that the tabulation, which I now hand you?

A. It is.

Mr. KILPATRICK. We offer this in evidence.

The COMMISSIONER. Plaintiff's Exhibit 46, one sheet (marked).

By Mr. KILPATRICK:

81. Q. Have you made an estimate or computation of the additional liability and compensation insurance expense to which you were put on this job as the result of which you complain?

A. As the result of our loss, of which we complain?

82. Q. Yes?

A. Due to the actions of the Government and its agents?

83. Q. Yes?

A. I have.

519 84. Q. You have?

A. Yes.

85. Q. Now, then, before I offer this, I want to ask you this, Mr. Clarke. This document is simply a statement of how that item is estimated? Am I right?

A. Correct.

86. Q. And it is your statement?

A. It is.

Mr. KILPATRICK. We offer it in evidence.

The COMMISSIONER. Plaintiff's Exhibit 47, one sheet (marked).

By Mr. KILPATRICK:

87. Q. I now ask you, Mr. Clarke, if you have prepared a similar statement of the items of cost of temporary heating at Roanoke, as shown by your books?

A. I have.

88. Q. This is it [showing paper]?

A. It is.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. Plaintiff's Exhibit 48, 3 sheets (marked).

By Mr. KILPATRICK:

89. Q. Mr. Clarke, in the petition, at page 7, appears an item of \$290.89, designated as extra expense created in field as resulting from delay in heating plant?

A. We sublet to the Virginia Bridge & Iron Company, of Roanoke, Virginia, the furnishing and erecting of all structural steel in these buildings. They were so greatly delayed in securing information from Redmon for the fabrication of their steel, 520 that we insisted that they go ahead and erect, fabricate and erect, such parts as they could, in order to permit us to do a little bit of our work. We hoped we would get the information in time for them to work continuously. We failed in this, and their equipment stayed on the job for several months, waiting for this information. They were finally obliged to remove their equipment for other work, and that is for the moving

of it and bringing it back. It involved an additional expense for which they notified us they would have to charge. We transmitted their letter to the Veterans' Administration at the time. Later, when they brought the equipment back and completed the erection of the steel, they charged us the amount stated, and we were obliged to pay it.

90. Q. You did pay them \$290.89 on that account?

A. We did.

91. Q. Now, I will ask you if you have a tabulation of the cost of grading and walks at the Roanoke Hospital job resulting from the delays and interference of which you complain in this suit?

A. I have.

92. Q. [Showing paper.] Is this it?

A. This is grading.

93. Q. You speak now—I am showing you a document of three sheets.

A. That is correct. The grading and the roads, walks, curbs, and so forth.

521 94. Q. Extra cost of grading on sheet one?

A. Yes, sir.

95. Q. Extra cost of what on sheet two?

A. The roads, walks, curbs, and so forth.

96. Q. And what is sheet three?

A. It is a tabulation, showing how we arrived at the extra cost on sheet two.

Mr. KILPATRICK. We offer these in evidence.

The COMMISSIONER. Plaintiff's Exhibit 9, 3 sheets (marked).

By Mr. KILPATRICK:

97. Q. I ask you, Mr. Clarke, if you have prepared a tabulation of the extra cost to Mr. Blair of the brick work on the Roanoke job, resulting from the rulings with reference to building of the outside scaffolds and the requirement that they build outside scaffolds?

A. I have prepared an estimate of that cost.

98. Q. Is this it? I give you two sheets.

A. This first sheet is the estimated cost of the outside scaffolds, and the second sheet is the estimate of the additional cost of labor in laying the brick from the outside scaffolds, and a statement regarding the extra cost due to unusually critical supervision on the work.

By Mr. WATSON:

99. Q. Those are all estimates, are they?

A. Yes, sir.

By Mr. KILPATRICK:

100. Q. Whose estimate is it?

522 A. The estimate was made from a careful estimate of quantities taken from the plans and photographs of the scaffold by an accurate estimator in our office, the pricing of it is mine, after consultation with those who actually supervised the construction of the scaffolds.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. Plaintiff's Exhibit 50, 2 sheets (marked).

By Mr. KILPATRICK:

101. Q. I will ask you Mr. Clarke, if you have estimated the additional cost to the Roanoke job resulting from the requirement that you pay all carpenters at the rate of \$1.10 per hour?

A. I have.

102. Q. I hand you one sheet, and ask you if that is your estimate on that item?

A. It is; yes, sir.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. Plaintiff's Exhibit 51 (marked).

By Mr. KILPATRICK:

103. Q. Have you prepared a similar estimate as to the additional cost of the reinforcing steel work, resulting from similar rulings?

A. I have.

104. Q. I hand you one sheet, and ask you if that is your estimate on that item?

A. It is not an estimate. It is a statement of the actual cost to us of placing the reinforcing steel, as against our estimated
523 cost, which our experience tell us was ample, and within which we would have been able to do the work, except for the rulings referred to.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. Plaintiff's Exhibit 52 (marked).

By Mr. KILPATRICK:

105. Q. Now, about the Exhibit just offered, Plaintiff's 52, do I understand your testimony to be that the figure of \$17,149.65 is the cost figure taken from your books, and which can be verified by the Government auditors?

A. You are correct.

106. Q. Have you prepared from your books a statement of the salaries and expenses of Mr. Andrew and Mr. Ellingsworth in connection with the Roanoke job?

A. I have.

107. Q. I hand you an exhibit, and ask you if that is your statement, so prepared?

A. The first sheet is. The second sheet is a statement of other traveling expenses from the Montgomery and Roanoke offices on the job, as compared with normal traveling expenses for a similar job, and which was our actual estimated traveling expense.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. Plaintiff's 53, 2 sheets (marked).

By Mr. KILPATRICK:

108. Q. Mr. Clarke, in connection with Plaintiff's Exhibit 53, the last document which we put in evidence, I will ask you to
524 explain the next to the last item on the second sheet, \$500.00 (five hundred dollars).

A. That was the amount included in our estimate in preparing our estimate for traveling expense, based on our experience as to the approximate amount of traveling expense usual and customary for a contract of that size and character.

109. Q. Have you prepared a computation of the loss claimed on account of rulings with reference to rubble stone?

A. I have.

110. Q. I hand you exhibit, one sheet, and ask if that is your computation on that item?

A. It is.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. Plaintiff's Exhibit 54, (marked).

Mr. KILPATRICK. One sheet.

111. Now, Mr. Clarke, have you prepared from the books a statement of the actual cost of performance of the Roanoke job, the amounts paid therefor by the Government, and the resulting loss to Mr. Blair on the job?

A. I have.

112. Q. (Showing paper, Ex. 55.) Is that the computation?

A. It is.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. Plaintiff's Exhibit 55, 1 sheet (marked).

Mr. KILPATRICK. Mr. Ball will resume the examination, if the Commissioner please.

525 Cross-examination by Mr. WATSON:

113. Q. Did you supervise this Roanoke job?

A. I supervised the work of handling the Montgomery office end of it.

114. Q. You made the estimates here in Montgomery?

A. The estimates were made in the Montgomery office.

115. Q. Under your supervision?

A. Under my supervision, and with my assistance.

116. Q. Tell us how much money Mr. Blair lost on this contract?

Mr. KILPATRICK. The last exhibit.

A. We paid out at the job, or for materials, \$77,216.45 more than the Government paid us for the work, and we had in our Montgomery office overhead, salaries, and expense chargeable to this job, \$64,492.51, making a gross total loss to us on this contract of \$141,708.96.

By the COMMISSIONER:

117. Q. Let me ask a question: Where is that attached schedule?

A. It was offered previously in connection with the Montgomery office expense, and is marked "Plaintiff's Exhibit 46."

The COMMISSIONER. We are obliged to have that in there, so the Court can find where to get it.

A. Yes, sir. I overlooked that at the time.

By Mr. WATSON:

118. Q. Now, you testified of some mistake made by the Modene Company. Was the Modene Company a subcontractor to the Blair Company?

A. No, sir.

526 119. Q. Who was it the subcontractor of?

A. The Redmon Heating Company. As a matter of fact, they weren't subcontractors, they were manufacturers, from whom Redmon purchased these radiators, and on whom Redmon called to make up the schedule of the radiators.

By Mr. KILPATRICK:

120. Q. I hand you Plaintiff's Exhibit 46, as to which you have testified was your computation of the Montgomery office overhead charges to this job, and ask you to explain in detail how you allocated that part of the Montgomery office expense, that is the sixty-four thousand and odd dollars to the Roanoke job, that is the page marked "Schedule A."

The COMMISSIONER. What number is it?

Mr. KILPATRICK. Plaintiff's Exhibit No. 46. It is headed "Schedule A." Two pages; no, one page.

The COMMISSIONER. Go ahead.

A. It shows in the first column the amount of money earned by us on the Roanoke job during each month that the work was under way; in the second column, that was the amount of money earned by us on all other jobs.

The COMMISSIONER. Which were going on at that time?

A. Yes, sir.

121. Q. At that point, Mr. Clarke, will you explain what you mean by "amounts earned"?

527 The COMMISSIONER. The amounts paid you by the Government!

A. No. The Government only pays 90 percent of our earnings at a time, but this is the gross amount of work done on these jobs, as is estimated by the Government.

122. Q. Each item, 100 percent, and 90 percent would be paid in cash?

A. Yes.

123. Q. The first column is the Roanoke job, and the second column all other jobs that were running concurrently?

A. Yes, sir.

124. Q. And the third column the total of them?

A. Correct.

By Mr. KILPATRICK:

125. Q. And those are the figures of the Government inspectors as recommended to Washington, on which your payments were based?

A. That is correct. So that, during that 13½ months period we earned a total of \$2,099,547.13. The next column shows the monthly expense, the Montgomery office expense, which includes rental, and everything that goes into the overhead. The next column, the Montgomery office salaries, and the two of those total \$110,262.18 or five and a quarter percent of the amount of work done by us.

The COMMISSIONER. And as appears, the total claim, there is the difference shown?

A. Then, to find the proportion of the Montgomery office expense chargeable to any job during any time, we would take
528 the amount of money earned on that job during that period, and allocate 5¼ percent to it. And 5¼ percent of the price of the Roanoke job would be \$64,492.51, as shown by the statement made.

By Mr. KILPATRICK:

126. Q. Which are shown on your books, which are submitted to the Government; is that correct?

A. Yes, sir. All these tabulations are taken from our books.

529 The COMMISSIONER. I think it is proper at this time to have the record to show that the plaintiff is tendering the Government full opportunity to inspect any and all documents, and papers of all kinds which may serve as a basis for any and all of the figures in this series of exhibits, the books and everything.

Mr. KILPATRICK. That is correct, sir.

The COMMISSIONER. Because in fairness to Mr. Watson, it is one of his early cases, it was assigned to him only a week or two before he came down here, and, ordinarily, one in that position would have the assistance of the Government inspectors during this hear-

ing, and I think in fairness to the record, it ought to go in again that everything is open to the Government auditors to work on.

530 Mr. DOYLE. The Roanoke Marble and Granite Company is a subcontractor, named also as party plaintiff in this proceeding, being a subcontractor of Algernon Blair, the principal contractor, and presents a claim for losses or damages growing out of the unfair ruling of the Government inspectors with respect to the use by the subcontractor of what is termed "intermediate" or semiskilled labor.

The claim of the Roanoke Marble and Granite Company is stated in the petition, beginning at page 417, at paragraph 16, and is, briefly this: The Roanoke Marble and Granite Company entered into a subcontract with Algernon Blair for the performance of tile, terrazzo and marble work upon this veterans' hospital at Roanoke. There were competitive bids and their bid was accepted by Blair, and they began work about August 24, 1934, and the work was estimated by the subcontractor to cover a period of about three months.

Mr. DOYLE. Yes; there were other bidders. And owing to the rule of the inspectors with reference to the limitation or nonuse of the so-called intermediate or semiskilled labor, the subcontractor, in the performance of the tile, terrazzo and marble work on the hospital, was delayed, which interfered with his whole general plan of workmanship, so that the time for performing his subcontract on that work actually consumed about five and one-half months and was not completed until about the middle of February, 1935.

Because of that condition, he suffered unnecessary costs and loss and damage in extra labor and overhead expense. In the
531 petition, we have alleged that additional cost is \$8,629.98.

As a matter of actual proof, the damages will prove in excess of that amount, and we will ask the privilege of amending our petition to conform with our proof; and the damages will also cover the overhead expenses on this extra labor cost, as well as the labor cost.

C. B. WILSON, a witness produced on behalf of the plaintiff, testified as follows:

Direct examination by Mr. DOYLE:

Q. 1. Will you state your name for the record, please?

A. C. B. Wilson.

Q. 2. Your present address, business address?

A. 1750 South Jefferson Street, Roanoke, Virginia; president and manager of the Roanoke Marble and Granite Company.

Q. 4. Mr. Wilson, how long have you been engaged in this business?

A. Since 1914.

Q. 5. And how long has the corporation, the Roanoke Marble and Granite Company, been organized?

A. The preceding corporation to the Roanoke Marble and Granite Company was named the Roanoke Vitrolite and Marble Works, incorporated in 1914. The name was changed to the Roanoke Marble and Granite Company in 1925.

Q. 6. It is the same corporation?

A. The same corporation, yes; just a change of name.

Q. 7. Organized under the laws of what State?

A. The State of Virginia.

Q. 8. The corporation is still in existence?

A. Yes, sir.

Q. 9. A going and continuing corporation?

A. Yes, sir.

Q. 10. And you are its president?

A. Yes, sir.

Q. 11. Who owns the stock of that corporation?

A. Myself and Mrs. Wilson own the majority, and there is one other share for the secretary and treasurer.

532 Q. 12. Was that the condition that existed in 1933 and 1934?

A. Yes, sir.

Q. 13. Mr. Wilson, did that corporation enter into a contract with Algernon Blair, with reference to the tile and terrazzo work on the United States Veterans' Hospital in Roanoke in 1933?

A. Yes, sir; for furnishing and installing of all labor and material in connection with the tile and terrazzo work, and the furnishing of the labor for the installation only of the marble work.

Q. 14. Did you prepare the bids?

A. Yes, sir.

Q. 15. Did you do that, yourself?

A. Yes, sir.

Q. 16. And were there any other bidders?

A. Any other bidders?

Q. 17. Yes, were there any other bidders?

A. Yes, sir.

Q. 18. In other words, was there competitive bidding?

A. Yes, sir.

Q. 37. Now, Mr. Wilson, when you made those bids, will you please explain, for the purpose of the record, the information

that you had available in making your computations and estimates of the material and labor cost?

533 A. According to the specifications, we were to pay for skilled labor a dollar and a dime per hour, and for the common labor 45 cents per hour. We assumed and judged that we could use intermediate labor—we had that right—with a higher rate than common labor, which we established at 60 cents per hour as being the right proportion between the skilled and common labor.

Q. 38. Now, I show you Plaintiff's Exhibit 2-A, which is a copy of the original specifications for the buildings and utilities for the Veterans' Administration facility. Did you have that available when you made the bids on this job?

A. Yes, sir.

Q. 39. Do you have a copy of your own there?

A. Yes, sir; the same thing.

Q. 40. Will you please turn to that specification and explain, for the purpose of the record, your understanding of the wage provisions governing these contracts?

A. On page 6-A, the specifications refer to PWA Bulletin No. 51, which bulletin set out that we were to pay a dollar and a dime and 45 cents. I think there is a paragraph in there giving us—or stating that there is nothing in the foregoing that would prohibit us from using semiskilled helpers, which usually follow the business of helping mechanics.

534 Q. 41. Do you have Bulletin No. 51?

A. Yes, sir.

Q. 42. Turning to Plaintiff's Exhibit No. 38, which is in evidence, Bulletin No. 51, will you please point out the provision in there to which you refer?

A. On page 8, paragraph 4, it states: "The above designated minimum rates are not to be used in discriminating against assistants, helpers, apprentices, and serving laborers, who work with and serve skilled journeymen mechanics, and are not to be deemed as unskilled labor."

Q. 43. That refers to "the above provision." Point that out, will you, please?

A. Skilled labor at \$1.10 and unskilled labor at 45 cents.

Q. 44. And you had that bulletin available when you made your estimate?

A. Yes; our estimate is based on those parts.

Q. 50. Will you please turn to that last document, Plaintiffs' Exhibit 62, the section with reference to wages, paragraph 18,

and state your understanding of the use of semi- or unskilled labor?

A. Article 18, subparagraph (d) reads practically the same as PWA Bulletin 51, which is quoted above as follows:

535 "The above designated minimum rates are not to be used in discriminating against assistants, helpers, apprentices and serving laborers who work and serve skilled journeyman mechanics and who are not to be deemed as unskilled labor."

Q. 51. By reference to the above article, what is that?

A. It specifies that we are to pay \$1.10 per hour for skilled and 45 cents per hour for unskilled labor.

Q. 52. And was that in accordance with your practice in the trade of using semiskilled labor?

A. Yes; it is the general custom and usage of the trade to use semiskilled or experienced help.

Q. 53. What do you call those?

A. We sometimes call them apprentices and improvers. It is all semiskilled labor.

Q. 54. Will you please explain, for the purpose of the record, the practice in the trade, the tile trade, of using semiskilled labor or apprentices as you term them, and the necessity therefor?

A. Experienced help is semiskilled, is called semiskilled, because they can help a mechanic do his work very much faster. They usually know how to mix the mortar, they usually cut the tiles, they know the different kinds of tile that the mechanic will require for the space, and they get it. They do the grouting, the cleaning, and part of the time they use certain of the mechanics' tools in doing this work. That causes the mechanic to do a great

536 deal more finished work on a unit of production, which is less costly, we will say; whereas, if you use common labor

and get any kind of labor that did not have that knowledge, or any knowledge, at all, of the business, the mechanic has to do practically all of the work and the laborer stands around and looks at him most of the time, and he is really of no great value.

Q. 55. Is that true with reference to the terrazzo and marble work also?

A. Yes, sir. They are all allied lines, tile setting and terrazzo. We always use semiskilled labor with the mechanics.

Q. 56. What is your unit plan of using mechanics and laborers?

A. It is according to the size of the job. On this job under consideration here, we started—I was going to use a unit, on account of the volume of this work, of one mechanic and two helpers, with sufficient common labor to get the rough work done and move the tile.

By the COMMISSIONER:

Q. 57. What do you mean by terrazzo work, Mr. Wilson?

A. Terrazzo, sir, is a composition flooring made of marble granules, with cement mixed, and placed on the floor in mastic form. Then it is rolled and troweled and rolled again and troweled, and finally ground, roughly, and then fine ground to finish it, polish it.

By Mr. DOYLE:

Q. 58. Let me ask you, Mr. Wilson, is this terrazzo flooring in this hall out here?

537 A. Yes, that is terrazzo flooring, with marble border.

Q. 59. With a marble border?

A. Yes, sir.

Q. 60. I notice some brass strips in between; what are those for?

A. The brass strips are put in there for expansion and contraction.

Q. 61. Of the terrazzo?

A. Yes; the expansion and contraction of the terrazzo.

Q. 62. On this Roanoke Veterans' Hospital job, what was the larger part of the work?

A. The larger part of the work on the hospital was the tile. Under the specifications, we were given the option to use tile base and border, in lieu of the terrazzo specified.

Q. 63. That is illustrated by the base and border in these halls out here?

A. That is correct.

Q. 64. That is marble base and border there?

A. Yes; that is marble base and border.

By the COMMISSIONER:

Q. 65. And you were given the option to use tile or terrazzo?

A. We were given the option to use tile in lieu of terrazzo that was specified, and we exercised that option, because it was more reasonable in cost to do so.

Q. 66. And used what kind of tile?

538 A. It was quarry tile. Quarry tile is a mixed clay product and extruded and comes through the machine in molded form and is cut off to the desired length and then is burned. That is what we term quarry tile.

Q. 67. What is that word you used?

A. Extruded! That means that it is forced through the machine and formed in the machine and then cut.

Q. 68. Now, one thing more: Do I understand that they also use terrazzo for border work, as well as base work?

A. Yes, sir. In certain portions of this work here we were given that option. In the operating section of the building, we placed terrazzo floors and terrazzo base. That floor was what was termed melotized flooring, which is electrically ground.

Q. 69. But you say the larger part of the work, however, was tile work?

A. Yes, sir.

Q. 70. The use of quarry tile?

A. Yes, sir; after we changed from terrazzo to quarry tile, that became the larger portion of the work.

Q. 71. And the terrazzo work was the minor portion?

A. Yes, sir.

Q. 72. How much, approximately, was the marblework; was it substantial?

A. The marble wasn't a great deal. We only had the labor out there on the marble and soapstone. Mr. Blair furnished the marble and soapstone under an agreement that he would deliver it at
539 the building site and we were, in turn, to set it.

Q. 73. You didn't furnished the marble?

A. No; we didn't furnish the marble.

Q. 74. You did furnish the sand, cement and lime for the terrazzo and also for the tile?

A. All the other material and labor we furnished.

Q. 75. Including the tile?

A. Including the terrazzo and tile.

Q. 76. Now, I believe I would like to ask you, also, Mr. Wilson, what has been your experience, and what Government jobs, Government buildings, has the Roanoke Marble and Granite Company performed work on in the past few years?

A. We have done, I should say, right much work under Government specifications. We did the Administration Building under the Bureau of Yards and Docks at the Naval Base down at Norfolk; and we have done quite a lot of these Post Offices, such as at Alexandria, Virginia; Beckley, West Virginia; Kingsport, Tennessee; Farmville, Virginia; Christiansburg, Virginia; Pulaski, Virginia; Martinsville, Virginia; and we are now working on a post office at Florence, South Carolina, and have just completed two post offices, one at Elkin, North Carolina, and one at Marlinton, West Virginia. These two last ones have not been completed more than a month.

Q. 77. Are you performing the tile work on this new Roanoke Hotel here?

A. Yes, sir.

Q. 78. For the Norfolk & Western Railroad?

A. Yes, sir.

540 Q. 79. Is it a substantial contract?

A. It runs around \$47,000. We have done other large jobs, Mr. Doyle, if that is what you want, under private ownership.

Q. 80. Yes. Tell us what a few of those are.

A. Well, we did a hotel in Charleston, South Carolina, the Fort Sumter Hotel. We did a hotel in Johnson City, Tennessee. We did a \$55,000 contract on the Kentucky Hotel in Louisville, Kentucky; and in Roanoke here we have done the Anchor Building, the Boxley Building, and the Colonial Bank Building. I'm just trying to pick out some of the larger jobs. I should think those would be plenty.

Q. 81. Are those the principal office buildings in the city?

A. Yes; they are the largest in the city.

Q. 82. Did you ever lose any money on any Government job, other than this one?

A. No, sir; I never lost a dollar on any Government work in my life, or any private work, either, until we did this Veterans' facility.

Q. 83. Now, Mr. Wilson, at the time you made this bid on this job, was there available semiskilled or apprentices or intermediate labor at the rate of 60 cents per hour?

A. Yes, sir.

Q. 84. No trouble to get semiskilled labor?

A. Not at all.

Q. 85. Did you have them working for you?

541 A. We had a lot of them working for us at the time, and a lot of mechanics working for us at the time. Conditions out there were somewhat peculiar. I thought that I would have the right to pick our own organization out there, and then supplement that organization through employment channels down here. But when we got out there on the job, we found that we could not use our own men; we had to let them go, and they, in turn, had to come down to the employment office and register, and we got the mechanics through the union.

Q. 86. Did that apply to the mechanics?

A. No; the mechanics came through the union, and the semi-skilled and laborers came through the Reemployment Office here in Roanoke. So we discharged all of our helpers and told them to go down and register, and then when they went down and registered, they had to get in line, and we would make application down there for them, and they would send them out, and kept on sending them to us, and sometimes we got help, and sometimes we didn't, we simply got common laborers.

Q. 87. What did you do about your common laborers?

A. We got the common laborers through this Reemployment Office. We had to get the common labor there. That was one of the restrictions.

Q. 88. That is the 45-cent labor?

A. Yes, sir; and it was very common.

Q. 89. Very common?

A. Yes; the boys didn't have anything to do, and they
542 just stood in line, and they sent us the first ones that registered, so we got the old men, the shell-shocked men, the sick men, and any other kind, and we put them to work to see what they could do and then let them go and tried to get some more.

Q. 90. Did you have the right to let them go or fire them at will, or did you have to work them so long?

A. I don't know that there was any exact ruling about that, but we acted fair and square and gave them a shot at the work, and worked them a day or two.

Q. 91. Now, Mr. Wilson, will you turn to your papers and tell me if you have made a summary of the estimated costs of the labor and materials on this contract?

A. Yes, sir; I made an estimate on which our proposal was based to Mr. Blair. This (indicating) is a copy that I have made from my original figures.

Q. 92. The original figures which you used when you submitted the bid to Mr. Blair for this work?

A. These are the original figures that I submitted—I mean these are the original cost figures on which I submitted the proposal to Mr. Blair.

By Mr. DOYLE:

Q. 93. And you have your work sheets here from which you made that?

A. Yes, they are all there. There is quite a sheaf of them here.

Q. 94. Now, do you know that these estimated costs are correct?

543 By the COMMISSIONER:

Q. 95. Correct as such estimates?

A. These figures are exactly my estimate. Now, for the correction of the same, of course, we have got to figure out the drawings and base our labor on experience.

Q. 96. Now, I notice that you have included an estimate for overhead expense, 15 percent?

A. Yes; that is a legitimate charge and customary to put on.

Q. 97. And your total bid price—\$37,703.80 is the total of the bids which we have offered in evidence here?

A. That is correct.

Mr. DOYLE. I will offer that in evidence as Plaintiff's Exhibit 63.

Mr. WATSON. No objection.

The COMMISSIONER. They will be received and marked "Plaintiff's Exhibit 63."

(Said estimate, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 63," and made a part of this record.)

By Mr. DOYLE:

Q. 98. Mr. Wilson, you made a break-down showing the quantities and rate of pay per day, and the number of days of labor, making up that estimate of the labor costs there in the previous exhibit?

A. Yes, sir; this is it right here [indicating]. This is a break-down of my total labor costs.

Q. 99. Will you please explain how you made the estimate of the quantities there?

544 A. The labor cost is based on a survey of the total amount of work that we were to do. Then it is broken down into days, and finally broken down into hours per man; and you are claiming the added cleaning, estimated cost of cleaning, the estimated cost of the bull gang, that is, the common labor.

Q. 100. And your total figure of \$10,404.75 is your estimated cost of labor?

A. Yes; that represents our estimated cost of labor to do the tile and terrazzo and the setting of marble, on which we based our proposal to Mr. Blair.

By the COMMISSIONER:

Q. 101. Now, does that show, Mr. Wilson, the break-down as to the different classes of labor that you were to use?

A. Yes, sir.

Q. 102. I notice one item in there of \$1.70—

A. You will find that is for a mechanic and helper.

By Mr. DOYLE:

Q. 103. That is listed in parentheses, "Mechanic, \$1.10, and helper, 60 cents, semi-skilled"; is that what you mean?

A. That is right. That is the way we estimate a job.

Q. 104. And you have an estimate here of 1,000 hours for the bull gang; what does that cover, the common labor?

A. That is the common labor, transporting tile and materials, sand, cement, etc.

Q. 105. Is that a reasonable estimate?

A. I think that is a fair estimate and the work could have been accomplished below that amount of money.

545 Mr. DOYLE. I offer that in evidence.

The COMMISSIONER. It will be received and marked "Plaintiff's Exhibit 64."

(Break-down of labor and materials, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 64," and made a part of this record.)

By Mr. DOYLE:

Q. 106. I understand that is based on your unit plant of employing a mechanic and semiskilled laborer and common laborer as a unit?

A. That is right.

By the COMMISSIONER:

Q. 107. And this exhibit represents or is a copy of the original estimate made by you, at the time you submitted your bid?

A. Correct.

By Mr. DOYLE:

Q. 108. From the work sheets that you have there?

A. Yes, sir.

Q. 109. The original work sheets?

A. Yes, sir; all of my work sheets are here.

By the COMMISSIONER:

Q. 110. I notice upon your work sheet there that it shows a break-down for labor, 520½ days, and the pay for the mechanic of \$1.10 and helper 60 cents; just that one sheet there?

A. Here is the quantities on the same bid, and here is
546 alternate 1-C, 1-B, and 1-A, and the total is averaged and here [indicating] is the number of days.

Q. 111. This sheet which you have shows the number of hours for the different operations?

A. Yes, sir.

Q. 112. Where on your sheet do you show a break-down as to the wages to be paid?

A. You want the amount now?

Q. 113. Yes.

A. That shows the unit figure there. We figured this two ways: We had a unit figure of so much per linear foot, or square foot, including the labor, and then I figured it on a break-down basis and checked the figures here. Here [indicating] it is. The figure is \$1.55, right here [indicating]. This covers the base and toe and the quarry and—

Q. 114. That would be \$1.10 for skilled labor and 45 cents for common labor?

A. That is correct.

Q. 115. Do you have anything that you have used—

A. The only thing I have used is \$1.60 on this computation here. I have \$10,744 here, but it actually works out \$10,404. I must have got it down somewhere.

Q. 116. Let me ask you this question: Turning to your original work sheet here, Mr. Wilson, do your quantities check with your original estimate thereon?

A. Yes, sir.

547 Q. 117. In other words, you have the original work sheet before you, from which you can check the items shown on Plaintiffs' Exhibit 64, which shows the gross hours used and the rate per day?

A. Yes, sir.

By Mr. DOYLE:

Q. 118. And your total hours and total number of days on your original work sheet total 520½, which compares with this tabulation of the original estimate?

A. That is right.

Q. 119. For the purpose of the record, explain how you computed your wage scale applicable to 520½ days?

A. \$1.10 for mechanics and 60 cents for experienced help, and then a lump on the common labor of 1000 hours.

Q. 120. Now, tell me this, while you are at it: How did you arrive at the setting hours per day in this tabulation?

A. Setting feet per day. That is based on experience as to what a mechanic can do or has done in the past on similar work.

Q. 121. How it will run, more or less?

A. Oh, surely.

Q. 122. That was your original estimate or bid?

A. Based on experience in my original estimate.

Q. 123. And those figures were made at the time?

A. Yes, sir.

Q. 124. Now, Mr. Wilson, will you kindly tell me when you went to work on this job?

A. The latter part of August.

548 Q. 125. Of what year?

A. 1934.

Q. 126. And what was your initial work; what did you do first?

A. We got in a carload of tile first and got it distributed around, and then the foreman and timekeeper and started to organize. We started to organize on the basis of a mechanic and an experienced helper; and were preparing to get going.

Q. 127. What units did you start with first?

A. We started simply with some common labor there to distribute the material around to the foremen, and then after we got that stuff around, we started with a mechanic and a helper, one mechanic and one helper.

Q. 128. So as to get it going into production?

A. Yes; just getting it going. Then we were going to build up with a mechanic and an experienced helper. We were on the

job, as well as I recall, approximately, a couple of weeks, and I got word from my foreman out there that I would have to come out there, that they had stopped work, and I went out there and found what it was all about, and they said Mr. Dodd had made a ruling that we couldn't use any experienced helpers; that any man that touched a tool was to be considered as a
549-550 mechanic. So I went on out there and asked Mr. Dodd about it, and he made the ruling in the presence of Mr. Godbey and myself.

Q. 129. Who is Mr. Godbey?

A. Mr. Godbey was our foreman.

Q. 130. And what is his first name?

A. F. M. Godbey, and Mr. Knox, who was the timekeeper, and I protested and told him that wasn't right, that we were entitled to use experienced help, and he said no. I asked him if he would put it in writing, and he said no, and then I immediately went over to the general contractor's office and saw the general superintendent, Mr. C. W. Roberts, and told him the situation, and asked him to please come and go to Mr. Dodd's office and hear him; and he went over there with me again, and Mr. Dodd made the same statement; that we couldn't use semiskilled or experienced help, and I asked him to put that in writing again, and he said he wouldn't do it.

Q. 131. Did he indicate whether that ruling applied solely to the tile or terrazzo work or to the work generally?

A. No; as I understood it, a man was either a mechanic at \$1.10, or a common laborer at 45 cents all over the building, everywhere.

Q. 132. You mean for the mechanics of the general contractor, as well as yourself?

A. Yes, anybody else's mechanics. The rule applied all the way around. There would be no reason to single me out and make it simply apply to me, because the other crafts around the building have had some semiskilled men and helpers, experienced helpers.

Q. 133. What do you do then?

A. Well, we couldn't do anything else but protest, and I protested to Mr. Dodd, and I protested to Mr. Roberts, the assistant, but I didn't get anywhere. They told me to go ahead, that
551 I had to do the job, and we went on and did the job. We fired our experienced help, and I think two of them or three of them were raised up to \$1.10 an hour, and they couldn't hold the job, so we had to let them go.

Q. 134. Do you remember the names of those three?

A. One of them was a man named Wallace Hopkins, one of them was named Cecil Marshall, and one of them was named Hastings—we called him "Red Hastings," and I have forgotten his initials.

Q. 135. Why couldn't they do their work?

A. Because they weren't mechanics. They had been assistants or helpers, but they couldn't do a mechanic's work, they weren't good enough. They were good enough for semiskilled, they could do a certain amount of work, but they couldn't do a mechanic's work.

By the COMMISSIONER:

Q. 136. When you were making these protests, were any of them put in writing, or was all of it oral?

A. Yes; I wrote to everybody that I could think of.

By Mr. DOYLE:

Q. 137. Please explain, if you will, Mr. Wilson, when you raised these men to \$1.10 per hour and put them on as mechanics, could you use them as helpers in your unit plan of production?

A. No, sir; you couldn't use them as helpers because they had to join the union in order to be mechanics, and after they joined the union they were mechanics and wouldn't work as helpers. You see, out there we had to either use two kinds of labor, and we had to get them from two sources; one of them was the union and the other one was the Reemployment Service. You had to have one or the other. A man had to have one of those cards to
552 get a job, and if it was the union, that was okay, he could come right on in and work. And so when these boys went and joined the union and then we had to let them out, because they couldn't do the work, and then we found out another thing we didn't anticipate in connection with the labor; there was no objection to getting union labor, provided we could select the labor that we wanted, so that our unit of production would be something within reason, but we found out we had to take every man who joined the union in Roanoke, first, and exhaust all of the union men here from Roanoke; and next we had to go into the county and nearby towns, and finally we had exhausted all of them in the State before we could go out of the State and get mechanics that we knew were good. We finally, however, exhausted all of the people in the State and we finally, before we got through, went outside of the State to get mechanics.

Q. 138. Now, you referred to these men not being able to do the work, these semiskilled men that you raised to mechanics; you mean that they couldn't keep up the production; they couldn't produce enough, or that their work was faulty?

A. They couldn't produce enough and their work wasn't standard, wasn't good enough, because, if you don't do it good enough, here will come an inspector who will tell you to knock it down and do it over again.

553 Q. 139. Tell me this: Under that condition, what did you do for helpers or apprentices for your mechanics?

A. We got this common labor that we got at the Reemployment Service.

Q. 140. Colored or white?

A. Both; and we tried them out and kept on trying them out until we finally educated them a little bit, simply by the drilling method. We had an awful lot of labor turnover. We had a terrific amount of accidents on the job, on account of the common, green labor.

Q. 141. Where is Mr. Knox now?

A. I don't know where Mr. Knox is. The last I heard of him, he was in Florida. He left our employ several months after we finished this job.

Q. 142. He was your timekeeper?

A. Yes, sir.

Q. 143. And he was in this conference that you had with Mr. Dodd?

A. Yes, sir.

Q. 144. And Mr. Roberts?

A. Yes, sir.

Q. 145. Who else was there?

A. Mr. Godbey.

Q. 146. Your foreman?

A. Yes, sir. I might also say that the unions allowed us to use experienced helpers, and we can also have one apprentice for each three or four mechanics, I have forgotten which, but in that case an apprentice is almost equal to a mechanic.

Q. 147. Now, taking this item here in your original estimate of 25,094 linear feet of base and border, which you figured on setting at the rate of 150—

A. 150 linear feet a day; yes, sir.

Q. 148. And 167 days?

A. Yes, sir.

554 Q. 149. How many units would you employ on that work?

A. You would probably have—according to how much of it was ready—probably have half a dozen or more mechanics on the base and border.

Q. 150. I am speaking about the units. You say a unit, as I understand it, is a mechanic and a helper and a couple of laborers?

A. Yes, sir.

Q. 151. Then you would multiply those units—

A. Yes, sir. So I say on this base and border I guess at one time we had as many as twenty units working on it alone, because there was an awful lot of it. You see, there is nearly fifteen miles of it.

Q. 152. Under the conditions under which you were required to operate, what did you do?

A. Well, we had one mechanic and about three or four of these common laborers. That is the way it turned out, because they couldn't do anything much, and we had to have plenty of labor there to do it, because they couldn't do it like an experienced man could do it.

Q. 153. How did that affect your setting estimate per day?

A. It slowed it down, too, I guess—the last time I figured the average on that job, it was really down to less than 100 feet a day. We are speaking of base and border now.

Q. 154. Base and border, yes; 100 feet a day?

A. Yes, sir.

555 Q. 155. How much, under the unit plan, if you were permitted to use semiskilled labor, would you increase your production?

A. We would increase it about 50 percent. One hundred fifty linear feet per day, Mr. Doyle, isn't an excessive amount for a mechanic and helper to do. We could easily have pushed it up—some fast mechanics could have pushed it up to 175 or 200 feet.

Q. 156. Would the same thing apply to this other work, this other tile and terrazzo work, which you have estimated to take—

A. That applies generally to all of the tile work out there.

Q. 157. What do you mean by this wainscoating and cove, 12,887 square feet?

A. That is where we had wainscoating to go up on the wall, sometimes four feet and sometimes seven feet.

Q. 158. Such as in the bathroom?

A. Bathrooms, showers, and kitchens, and a great many different places.

Q. 159. What do you mean by cove?

A. Our cove is the internal angles and external angles that were all around in this job.

Q. 160. Could a mechanic and a helper do as much, per day, on that as he could on just straight work?

A. If it was straight work and didn't have any coves in it,
556 he could do more, but the coves slowed him down. If there had not been any coves on it, we could have finished that job at 100 feet a day.

Q. 161. How about the marble work? Did this same condition apply to the marble work?

A. The same thing, because we didn't have any experienced help on it, and there is always great danger of chipping your marble in the handling of it and setting, so we were right much handicapped on that and I don't know just what percentage would have applied on it.

Q. 162. That wasn't as much of your work as the tile work?

A. No; it was a small part.

557 Q. 163. Will you identify this, please?

A. Yes; this is a letter that I wrote to Mr. Blair in Montgomery, when I protested about it, and he knew all about this condition through Mr. Roberts here in his office, and I called his attention to the fact that we were working under great difficulties there. I wrote that letter and signed it.

Q. 164. What bearing, if any, did this have on this ruling of Mr. Dodd, with reference to the use of semiskilled labor?

558 A. It was slowing up our job to such an extent that Mr. Blair wrote me a letter, personally, saying that he was very much disturbed over the situation, and this, I think, is a reply to that particular letter, where he said he was disturbed, and I was disturbed over the situation, because it was a rather trying condition that we were working under then.

Mr. DOYLE. I will offer that in evidence as Plaintiff's Exhibit 65.

By Mr. DOYLE:

Q. 165. Did you continue to make any other protests to Mr. Roberts, or Mr. Clark, or Mr. Blair?

A. I told Mr. Roberts—he was the general superintendent upon the job—when this ruling was made, I said, "Roberts, we are going to lose money from now on." I said, "We can't make it to save our souls while we have an intermediate scale on this job."

Q. 166. Please identify this letter.

A. This is a letter I wrote to Mr. Blair's office, for the attention of Mr. Clark. Mr. Clark—

Q. 167. What date is this?

A. November 26, 1934. Mr. Clark seems to have written me a letter, jacking me up about—that we weren't going ahead, and this is an answer to that, and again I protested and told him that our costs were running beyond all reason.

By the COMMISSIONER:

Q. 168. Mr. Wilson, about when was this ruling made?

559 A. This ruling, Mr. Akers, was made, as well as I can recall it, on our work, the second week in September, about Tuesday or Wednesday. That is as nearly as I can recall.

By Mr. WATSON:

Q. 169. Was that a verbal ruling; no written ruling?

A. It was a verbal ruling, and I asked Mr. Dodd to put it in writing, and he refused to put it in writing, both in my presence and in the presence of Mr. Roberts.

By Mr. DOYLE:

Q. 170. Now, in this letter I have just handed to you, which Mr. Watson is examining, dated November 26, 1934—in what way did that pertain to the protest against the ruling of Mr. Dodd?

A. Why, I complained then about the restrictions that we were working under; that we couldn't do the work as fast as they wanted it.

Q. 171. What I am getting at is, were there any other complaints, any other reasons why you should write this letter, or any other reason why that should cause you to delay the work?

A. No; we didn't have any cause for delaying our end, that is, except this, because we were always supplied with tile fairly promptly. There may have been a few days' delay on tile. This was the thing that slowed us up.

Q. 172. You weren't held up for any other reason that you recall?

A. I don't recall any other reason that we were held up.

560 A. This is a letter addressed to Mr. Blair at Montgomery, dated December 11, 1934, which I wrote. In this letter, I asked Mr. Blair to cooperate with me, to seek relief from this arbitrary ruling, and to help me.

Q. 174. Arbitrary ruling of Mr. Dodd's?

A. Yes, and to help me get some relief.

By the COMMISSIONER:

Q. 1. State your name for the record.

A. F. M. Godbey.

Q. 2. And your present address?

A. 324 Berkley Avenue, Roanoke, Virginia.

Q. 3. And your occupation or profession?

A. Tile and marble setter for the Roanoke Marble and Granite Company.

Q. 4. How long have you been employed by that concern?

A. About twelve years.

Q. 5. Your present age?

A. I am 34.

561

By Mr. DOYLE:

Q. 6. Mr. Godbey, where did you learn the tile setting business?

A. Mostly in Roanoke.

Q. 7. Did you ever work anywhere else?

A. Yes, sir.

Q. 8. Where, originally?

A. I worked for R. N. Vanderberry in Beckley, West Virginia.

Q. 9. Is your original home in Roanoke?

A. My original home is here; yes, sir. I work for two or three different companies.

Q. 10. Name them for us, please.

A. I worked for A. Christletta, Charleston, West Virginia.

Q. 11. Anybody else?

A. And there was some firm in North Carolina, McClamrock.

Q. 12. And you are now employed by the Roanoke Marble and Granite Company?

A. Yes, sir.

Q. 13. In what capacity?

A. As foreman mechanic.

Q. 14. Foreman mechanic?

A. Yes, sir.

Q. 15. And you were employed by that company in 1933 and 1934?

A. Yes, sir.

562 Q. 16. Did you work on the Veterans' Hospital at Roanoke, for that company?

A. Yes, sir.

Q. 17. Were you a mechanic, or were you foreman?

A. I was foreman at that time.

Q. 18. What is the practice now in your work?

A. If the job is large enough, you are foreman; if it is a small job, you have to work along with the men, and you are kind of foreman-mechanic. It just depends on the size of the job.

By the COMMISSIONER:

Q. 19. On that job, were you doing the actual labor?

A. No, sir.

By Mr. DOYLE:

Q. 20. You were doing the actual foreman's work at that time?

A. Yes, sir.

Q. 21. Not setting tile, yourself?

A. No, sir; what we call the walking boss on the job.

Q. 22. Are you a member of a union?

A. Yes, sir.

Q. 23. What union; the name of it?

A. B. M. & P. I. U., the Bricklayers, Masons and Plasters International Union.

Q. 24. Local No. 7 of Roanoke?

A. Yes.

Q. 25. Affiliated with what organization?

A. The A. F. of L.

563 Q. 26. The American Federation of Labor?

A. Yes, sir.

Q. 27. And you were a member of the union, at the time, upon the Roanoke Hospital job?

A. Yes, sir.

Q. 28. Now, Mr. Godbey, at the time of the performance of the work on the Roanoke Hospital job, for the Roanoke Marble and Granite Company, will you kindly explain for the record the nature of that work out there that you had charge of?

A. The tile, marble, and terrazzo work.

Q. 29. Tile, marble, and terrazzo work?

A. Yes, sir.

Q. 30. And there was more than one building, I take it?

A. Yes, sir, there was quite a number of buildings.

Q. 31. Was it a large job?

A. Yes, sir; it was.

Q. 32. And you had a number of men employed?

A. Yes, sir.

Q. 33. Did you go to work on the job at the time they started, in August 1934?

A. Yes, sir; some time in the latter part of August, but I don't remember the exact date.

Q. 34. And you were in charge at that time?

A. Yes, sir.

Q. 35. Do you remember the first work, the character of the first work that you undertook on that job?

564 A. Yes, sir.

Q. 36. Will you please state what it was?

A. The first thing I did was to put in one room of base and border for Mr. Dodd to look at, so we could settle the argument of what size joints to use, and all of those little things that come up on a job.

Q. 37. And by Mr. Dodd, you mean the Government inspector, Mr. Dodd?

A. Yes, sir.

Q. 38. Do you remember what building that was in?

A. No. 7.

Q. 39. What is the name of that building; what do they call it?

A. That is the colored patients' building, but the official title I don't remember.

Q. 40. The colored patients' building?

A. Yes, sir.

Q. 41. Did you put in one room of tile, of base and border, for inspection?

A. Quarry tile base and border; yes, sir.

Q. 42. Did it meet the inspection?

A. Yes, sir.

Q. 43. Okayed?

A. Yes, sir.

Q. 44. Approved by Mr. Dodd?

A. Yes, sir.

Q. 45. What did you do then? What was the next thing you did?

565 A. Then we started on the other rooms in the building, doing the same thing, the rooms that required the quarry tile base and border.

Q. 46. And will you please state, for the purpose of the record, what system you employed in performing the work, mechanically; that is, as far as help and assistants are concerned?

A. Well, usually, the first thing we will do, the bull gang will put the material in the building, all in one room, and then you go to the room you are going to work in, and you will send your help down to get so many pieces of base or so many pieces tile, and if the tile is the kind that has to be soaked, the helper will put it in water and soak it for you, and get your mortar. You get your mortar in the room, screed off your mortar, and start to laying tile.

Q. 47. Who does those particular functions, the mechanic or his helper or the common laborer?

A. We usually have common labor to mix the mortar for you, and helpers to put your tile in soak, bring you the tile, make your cuts, grout your joints.

Q. 48. Grout?

A. That is what we call filling the joints. Some joints require neat cement, which is poured cement mortar, and some joints require sand and cement, and some require white sand, and that is the helpers' job.

Q. 49. White cement?

A. Yes, sir.

566 Q. 50. That is the helpers' job?

A. That is the helpers' job.

Q. 51. And what does the mechanic do?

A. The mechanic screeds off the mortar.

Q. 52. Does what?

A. Screeds off the mortar. That is what we call floating our mortar to a smooth surface, either on the floor or on the wall. The mechanic does that, and the mechanic lays the tile, either on the floor or on the wall. The mechanic fills it in, and either the helper or laborer, whichever one is there, washes it off behind him.

Q. 53. How about grouting up the joints afterwards; who does that?

A. The helper does the grouting.

Q. 54. Is that a common practice of the trade in the setting of all tile work?

A. Yes, sir.

Q. 55. That is the practice of the trade?

A. Yes, sir; that is what we are doing now.

Q. 56. And that is a practice that was commonly used at the time?

A. Yes, sir.

Q. 57. Did you employ on that job semiskilled help or apprentices?

A. The union called them improvers. We called them——

Q. 58. Improvers?

A. That is the union's name for them. We call them
567 apprentice boys and improvers; helpers, semiskilled labor.
They are helpers to us, though, on the job; they are the laborers helping the mechanics.

Q. 59. Was there plenty of it available?

A. Yes, sir.

Q. 60. What was the prevailing wage of improvers or helpers?

A. Sixty cents per hour.

Q. 61. Sixty cents per hour?

A. Yes, sir.

Q. 62. And you had plenty of them available in Roanoke?

A. Yes, sir; that were working for the company at that time.

Q. 63. And were they members of the union, or not?

A. No, sir; they don't have a union here.

Q. 64. "They don't have a Union here." Who do you mean?

A. The improvers or helpers.

Q. 65. They do not have any union here, but they do in some other places, I understand?

A. In larger places the helpers are organized; they are in Washington.

Q. 66. Now, the mechanics had a union at that time?

A. Yes; we have a mechanics' union here.

Q. 67. Now, you are familiar with the volume of work that you undertook on this job. How many units did you contemplate employing; more than one?

A. Yes, sir; in fact, we had more than one employed
568 at the plant at that time, and we thought we would use all we had out there and call in outside men as we needed them.

Q. 68. Now, will you kindly explain, for the purpose of the record, the nature of terrazzo work; what it is?

A. Terrazzo work is marble chips set in cement, and after it is set, grouted down.

Q. 69. For what use?

A. For floors, border, and base.

Q. 70. Border and base?

A. Yes, sir.

Q. 71. You didn't employ a terrazzo border or base on this job, did you?

A. Just a very small amount of it; that wasn't in the beginning, but that was along towards the last of the job.

Q. 72. I understand you used quarry tile?

A. Yes, sir.

Q. 73. And in the terrazzo work, did you use helpers the same as in the tile work?

A. Yes, sir.

Q. 74. Improvers, or semiskilled labor?

A. Yes, sir.

Q. 75. At 60 cents per hour?

A. Yes, sir.

Q. 76. How about the marble work; did you use helpers in that?

A. Yes, sir.

569-570 Q. 77. What did they do?

A. They drilled the holes for the marble setter, put in his angles and dowel pins, mixed his plaster.

Q. 78. Could that kind of work be done by common labor?

A. No, sir; you are afraid to trust them.

Q. 79. Why?

A. They would chip pieces or break pieces of marble, or drill the holes in the wrong place.

Q. 80. How do you drill holes in marble?

A. The mechanic usually lays out the space where he wants his angles or dowel pins, and the helper takes an electric drill and drills the holes.

Q. 81. Drill only from one side, or both sides?

A. No, sir. If it is a piece of marble finished on both sides, you have to drill on both sides; you drill from both sides and meet in the center.

Q. 82. Why is that?

A. So you won't knock a chip out of the marble.

By the COMMISSIONER:

Q. 83. How does a man qualify as a mechanic, as distinguished from a helper? In other words, how is this classification made, and who makes it?

A. The union says you have to serve four years of apprenticeship, and they assume, in that four years, you will get enough experience to know how to do the work by yourself.

Q. 84. In other words, after a helper has served for four years he would be eligible for membership in the union as a mechanic?

A. As a mechanic, with three more journeyman mechanics vouching for you. That is the union's rule here; they think
571 that a man working on a job for a union mechanic and if you can get three more mechanics to vouch for you, that is a pretty good sign you are a mechanic.

By Mr. DOYLE:

Q. 85. On the marble work, what does the mechanic do?

A. The mechanic puts on the hardware, plumbs the level—the actual setting of the marble is the mechanic's job.

Q. 86. Level?

A. The plumbing.

Q. 87. You mean make it straight up and down?

A. Yes, sir; he levels across this way [indicating], and plumbs it and levels it off, and plasters around the angles, and sees that it is the right height above the floor level.

572-573 Q. 88. Will you please explain what is a ceramic tile floor?

A. It is a tile flooring on the interior.

Q. 89. For use in what?

A. For use in bathrooms, toilets, shower baths.

Q. 90. That is the stuff that comes in little squares?

A. Yes, sir; it comes in little squares, some of it mounted on paper, and some isn't.

Q. 91. That is the tile setter's job?

A. Yes, sir.

Q. 92. You use semiskilled labor on that the same as you do the other tile work?

A. Yes, sir.

Q. 93. When you were working on this Roanoke Hospital job, do you recall any ruling that was made by the Government inspector with reference to the use—or limiting the use of labor, semiskilled labor?

A. Yes, sir.

Q. 94. What was that?

A. Mr. Dodd came to me and said there was no provision for semiskilled labor; he said a man was either a mechanic or a laborer.

Q. 95. About when was that, if you recall?

A. About two or three weeks after the job began.

Q. 96. While you were still working on this colored patients' building?

A. Yes, sir. Well, we had hired so many units that part of them had to go to the other buildings, but we were still working men in that building all right.

Q. 97. Did he give you any explanation of why you could not use semiskilled labor?

A. No, sir; he didn't say why.

Q. 98. Just said you couldn't do it?

574 A. No, sir; and I just thought it was a Government ruling and I didn't question it. It wasn't or it isn't the custom of the mechanic to question the engineer on the job that way.

Q. 99. Then what did you do?

A. Well, I told the men to stop, and I went and called up Mr. Wilson, the boss.

Q. 100. Then what did you do, what happened then?

A. Mr. Wilson came out there on the job, and Mr. Wilson and Mr. Roberts and Mr. Dodd had a conference, and finally Mr. Wilson came over and said we couldn't use them and asked were there any of them that could be used as mechanics, and I told him we would try—that I doubted it, but we would try, and we did try.

Q. 101. Were you present at that conference with Mr. Roberts and Mr. Wilson?

A. Yes, sir; I was.

Q. 102. At the time Mr. Dodd reaffirmed his ruling to Mr. Wilson?

A. Yes, sir.

Q. 103. What did you do then about this semiskilled labor or these mechanics?

A. Well, the best of the lot we raised to \$1.10 and let them try out as mechanics, and the rest of them we let go.

Q. 104. About how many of those were there that you raised; do you remember who they were?

A. I remember three of them; yes, sir; because I was acquainted with them, because they were local boys; Cecil Marshall, Wallace Hopkins, and Red Hastings.

575 Q. 105. What happened to those men; how did you use them?

A. We used them as mechanics, let them use their tools and go to work as mechanics, but they couldn't keep up with the other mechanics on the job, or couldn't keep close enough to them to justify us keeping them, so we had to let them go.

Q. 106. How long did they work, approximately; do you know?

A. It varies, but I think Hopkins lasted about a week, and Marshall about a week—not very long. I couldn't remember exactly how many days.

Q. 107. Did they join the union?

A. Yes, sir.

Q. 108. And they got union cards?

A. Yes, sir.

Q. 109. Could you use them as apprentices or semiskilled labor?

A. With a union card?

Q. 110. With a union card; yes.

A. No, sir.

Q. 111. Why not?

A. The union wouldn't allow it.

Q. 112. Against the rules?

A. Yes, sir; once they joined the union, they were
576 mechanics getting \$1.10 an hour, and they were supposed to do mechanics' work.

Q. 113. Now, under what conditions did you continue this tile work, marble work, and terrazzo work there?

A. By using mechanics and common labor; just the two classes.

Q. 114. What effect did that have on your work?

A. Naturally, that slowed you down, because if you have a common labor helper and if you send him down to get base, he will come back with something else; and you have base corners, extensions, and internal corners, you have flint, you have marble, and all of these different pieces, and when you send a green man after them he doesn't know what to bring back and will bring back something else.

Q. 115. What does the mechanic have to do about cutting his tile?

A. He has to cut his own tile.

Q. How about the mixing of the mortar, etc.?

A. Well, naturally, a green man doesn't know what proportions to use, so the mechanic has to go down and help mix the mortar also, be there and show him what proportions to use.

Q. 117. What effect did that have on your job, as a whole?

A. It naturally slows you down.

Q. 118. Did that slow you down on production on this particular job?

A. Yes, sir.

577 Q. 119. To what extent, if you recall?

A. I should say one-third.

Q. 120. Was there plenty of semiskilled labor available for this job?

A. Yes, sir.

Q. 121. Here in Roanoke?

A. Yes, sir; some was available then, and still is. The boys are here now. We are using them on the Hotel Roanoke job right now.

Q. 122. On the Hotel Roanoke job that you are working on now?

A. Yes, sir.

Q. 123. Where were you educated?

A. In Washington and in Roanoke. I went to the public school in Washington, in Kenilworth, right outside of Washington. I went to the public school in Roanoke, and V. P. I.

Q. 124. Did you go to V. P. I.

A. Yes, sir.

Q. 125. How long were you there?

A. Two years.

Q. 126. Did you serve in the Navy?

A. Yes, sir.

Q. 127. During the war?

A. No, sir; since the war.

Q. 128. You are now employed by the Roanoke Marble and Granite Company?

578 A. Yes, sir.

Q. 129. I understand you are privileged to accept other work when the Roanoke Marble and Granite Company hasn't got a job?

A. Yes, sir; that is the custom. The construction work is either a feast or a famine; you will have a lot of work, or you won't have any, and when there isn't much here we go to other towns and work, and when there is plenty here, the boys from other towns come here and work with us.

By the COMMISSIONER:

Q. 130. What year were you in the V. P. I.?

A. 1921 and 1922.

579 By Mr. DOYLE:

Q. 131. Did you ever do any work for Government Inspector Dodd, other than this?

A. Yes, sir.

Q. 132. Whereabouts?

A. At the Old Soldiers' Home at Phoebus, Virginia.

Q. 133. Was the work satisfactory?

A. Yes; as far as I know, it was.

Q. 134. Did you use helpers and improvers on that job?

A. No, sir; we used mechanics and laborers.

Q. 135. Mechanics and laborers?

A. Yes, sir.

The COMMISSIONER. When was that?

By Mr. DOYLE:

Q. 136. When was that, Mr. Godbey?

A. That was in the spring of 1936, I think.

Mr. DOYLE. Cross-examine, Mr. Watson.

Cross-examination by Mr. WATSON:

X Q. 137. Mr. Godbey, how long have you worked for Mr. Wilson?

A. For about twelve years. It isn't steady employment.

580 X Q. 138. Off and on?

A. Yes; off and on, when he has work, I work with him.

X Q. 139. You always were foreman on these jobs?

A. Yes, sir.

X Q. 140. What wages does he pay you, at present?

A. \$1.50.

X Q. 141. Is that the prevailing union scale here?

A. Yes, sir; \$1.00 an hour in town and \$1.00 out, with an allowance for board and room when you are out of town.

X Q. 142. Have you gone out of town on any job for Mr. Wilson?

581 A. Yes, sir.

X Q. 143. To what towns have you gone?

A. The last one was the Post Office in Florence, South Carolina. I came back last week. I did the Beckley Post Office, the Alexandria Post Office, the courthouse in Kingwood, West Virginia.

X Q. 144. That is all right. I think we have been over those before. Has Mr. Wilson always operated a union shop?

A. No, sir.

X Q. 145. When did he start operating a union shop?

A. The union here is wholly when we have a lot of construction work. When we have a lot of work, we all get a union and organize and raise wages, and when the construction work falls off, our union immediately disappears. It depends on how the work is, whether we have a union or not.

X Q. 146. Then Mr. Wilson takes advantage of that situation; is that it?

A. No; he works—it isn't in Mr. Wilson's hands, but it is in our hands. If we have a union, he works union men. If we happen to be out of the union, he works open shop. It just depends on how the mechanics are fixed financially.

By the COMMISSIONER:

X Q. 147. While you were working as foreman on this job, this Veterans' Hospital, were you paid the same, per hour, as the other mechanics on the job?

A. No, sir; I worked on a weekly basis. I made \$44 a week, because the mechanics were limited to 30 hours of work, five and one-half days.

By Mr. WATSON:

X Q. 148. Then you didn't get the contract scale of \$1.10 an hour?

A. No, sir.

X Q. 149. Mr. Godbey, how many days a week did you work?

A. On the Veterans' Hospital?

X Q. 150. Yes:

A. I worked five and one-half or six days per week.

X Q. 151. About how many hours a day?

582 A. We didn't stay there after the men left. When the men would leave, I would leave.

X Q. 152. What time was that?

A. We worked from 8 o'clock until 4:30; and after they would leave, we would get the material and lock up the shovels, buckets, and hose. All that had to be looked after.

X Q. 153. You worked from 8 o'clock in the morning until 4:30 o'clock in the afternoon?

A. Yes, sir.

583 X Q. 154. There has been some testimony here with reference to a unit. Tell us how many men comprised a unit on this job? I have reference now to the Veterans' Administration Building out there.

A. After Mr. Dodd's ruling, a mechanic and a helper was a unit, and they worked together.

X Q. 155. Prior to his ruling?

A. A mechanic, a helper, and a laborer.

X Q. 156. You say you worked with Mr. Dodd on the Old Soldiers' Home?

A. Yes, sir.

X Q. 157. That was in the spring of 1936?

A. Yes, sir.

X Q. 158. Was he reasonable in his inspections and rulings on that job?

A. Yes, sir; he was.

X Q. 159. Was he reasonable in his rulings on this Veterans' job out here?

A. Yes, sir; we didn't have any trouble with him, at all, before that.

584 X Q. 160. Have you worked on any other job with Mr. Dodd, or where Mr. Dodd was inspector, outside of the Old Soldiers' Home?

A. No, sir; only those two.

X Q. 161. Have you found him reasonable in all of his rulings?

A. Yes, sir.

Mr. WATSON. I believe that is all.

Redirect examination by Mr. DOYLE:

R. D. Q. 162. Mr. Godbey, let me ask you this: In referring to the rulings of Mr. Dodd, did you ever have any trouble with him, other than this ruling as to the use of semiskilled labor?

A. No, sir; not at all.

R. D. Q. 163. Had no trouble with him, with respect to the quality of the work?

A. No, sir.

R. D. Q. 164. Then when you say he was reasonable with respect to his rulings, would you qualify that in any way?

A. I mean in my experience with other building inspectors, he was as fair as any other Government inspector on Government work.

R. D. Q. 165. Well, would you say this was a reasonable condition under which to work, with reference to the elimination of semiskilled labor?

A. Reasonable?

R. D. Q. 166. Yes; was it a reasonable ruling?

A. To work without semiskilled labor?

585 R. D. Q. 167. Yes.

A. No, sir; because we had planned on using semiskilled labor and it was kind of surprising to us, because we had always done it and have used them since.

R. D. Q. 168. That was a hardship, then?

A. Yes, sir.

R. D. Q. 169. But with reference to the quality of the work, you had no trouble with Mr. Dodd?

A. No, sir; we didn't have any trouble on that account.

Mr. DOYLE. That is all.

RE-CROSS-EXAMINATION

R. X Q. 170. Wait a minute. Did you use intermediate labor on the Hampton job?

A. No, sir; I don't think there was any intermediate labor there.

R. X Q. 171. Was it skilled and unskilled; is that it?

A. Yes, sir; most of our help were colored labor there. There seemed to be a great number of colored men available, a greater number than there was white, but I took a helper there with me, and he was a laborer and I was a mechanic.

R. X Q. 172. What was he paid at Hampton?

A. Forty-five cents.

586 R. X Q. 173. The same as these that were paid here at Roanoke?

A. Yes, sir.

By Mr. DOYLE:

R. X Q. 174. Let me ask you this: You took a helper with your? Who was he?

A. Pat Garlick.

R. X Q. 175. Has he had any experience with this work before?

A. He has helped me on a theater in South Boston, Virginia, and he left there—

R. X Q. 176. He was willing to work for a common laborer's pay?

A. In that time, he would work for most anything he could get.

R. X Q. 177. Did he ever work for 60 cents an hour, or as an intermediate laborer or improver?

A. I don't think so; no, sir. He was just beginning at the trade; he was still classed as a laborer.

R. X Q. 178. But he was your helper that your selected?

A. Yes, sir; he helped me on this particular job, and when we went down there, he asked me could he go with me, and I took him down there and we both went on the work.

Mr. DOYLE. That is all.

Mr. WATSON. That is all.

587 JOHN NELSON GARLICK, a witness produced on behalf of the plaintiffs, testified as follows:

By the COMMISSIONER:

Q. 1. You may state your name for the record.

A. John Nelson Garlick.

Q. 2. Your present age?

A. Thirty-four.

Q. 3. And your residence or address?

A. 632 Montrose Avenue, Roanoke, Virginia.

Q. 4. And your present occupation?

A. Tile setter with the Roanoke Marble & Granite Company.

Q. 5. How long have you been employed by that company?

A. Off and on since 1929, but not steady. I worked for them the year of 1929.

Q. 6. As a mechanic or helper or laborer?

A. A tile setter. On some jobs, I have been foreman.

Direct examination by Mr. DOYLE:

Q. 7. Mr. Garlick, are you a member of the union?

A. Not at the present time.

Q. 8. Have you been a member of the union?

A. Yes, sir; I have been vice president and president of the local.

588 Q. 9. Were you employed by the Roanoke Marble and Granite Company on the Veterans' Hospital job at Roanoke in 1934 and 1935?

A. I went to work the 7th or 10th of September 1934.

Q. 10. And worked throughout the job?

A. Yes, sir.

Q. 11. As a tile setter?

A. Yes, sir.

Q. 12. A mechanic?

A. Yes, sir.

Q. 13. At what wage?

A. \$1.10.

Q. 14. \$1.10 per hour?

A. Yes, sir.

Q. 15. Are you also a marble setter; do you set marble?

A. I have set marble; yes, sir.

Q. 16. Do you do any terrazzo work?

A. No, sir.

Q. 17. What is the custom in the trade as to employing semi-skilled labor for tile setting and marble setting?

A. Well, your assistant; he is a great help to you; it is almost the same as two mechanics in the room if he is an experienced man. But if you have an ordinary laborer to bring the rough material to you, it is all right, as long as he is by the side of you and you can control everything he does, show him what to do, and all that, but he isn't capable of going into another room and get it by himself, but you have to go in and check on him all of the time.

If he is in the room with you, he does a lot of good.

589-591 Q. 18. That is an advantage over the use of common labor?

A. Yes, sir. With common labor, you spend too much time showing him what to do; in fact, you can't trust him to go out and get what you want until he has had—well, some men have to stay with you a year. Some man may stay with you a year and then he would never be any good, he never could bring you what you wanted; he never could get it through his head. If he was a bright man, it wouldn't be long until he was up in the semiskilled class.

Q. 19. You heard the testimony of Mr. Godbey in this matter here?

A. Yes, sir.

Q. 20. Mr. Godbey is your foreman at the present time?

A. Yes, sir.

Q. 21. You heard the testimony with respect to the practice in the trade of the use of semiskilled or intermediate labor?

A. Yes, sir.

Q. 22. Do you say that is correct; do you testify to that, what he says?

A. Yes, sir.

Q. 23. Let me ask you this question: On this Roanoke job, did you have occasion to hear, at any time, the ruling made by the Government inspector with reference to the nonuse of semiskilled labor?

A. Yes, sir.

Q. 24. What was that occasion?

A. That was in the No. 1 building. I was working in the hall-way, and there Cecil Marshall and Emery Coffey, and Mr. Dodd went in the room, and he came out and called Frank—I am not certain whether it was Frank Godbey or Mr. Knox—and he told him there was a man in there that couldn't be setting tile at the wages he was getting.

Q. 25. Referring to whom?

A. Marshall.

Q. 26. What was he employed as then?

A. He was there as a helper.

Q. 27. At 60 cents per hour?

A. Yes, sir.

592 Q. 28. Who was he helping, what mechanic was he helping, if you recall?

A. I don't recall. I remember Coffey and Marshall there.

Q. 29. You heard Mr. Dodd make that statement to Mr. Godbey or—

A. Or Knox, I forget which it was. The reason I remembered it was that Marshall—it was just before noon time, and he broke down and cried at the noon hour, because it cost him his job, and he couldn't hold a job in tile setting.

Q. 30. He broke down and cried during the noon hour?

A. Yes, sir. That was directly after the depression and a good many boys hadn't had work for a good while.

Q. 31. What happened to Marshall?

A. Well, he was put on as a mechanic then and I didn't see him any more—well, I saw him about a week after that, but I don't know how long he was there. We were scattered over so many different buildings that I don't know how long he worked.

Q. 32. And he was removed as helper?

A. Yes, sir.

Q. 33. And put on as a mechanic?

A. Yes, sir.

Q. 34. Do you know whether he held the job as mechanic, or not?

A. I know he held it for awhile, but I don't know how long.

593-594 Q. 35. Do you know whether or not there was an ample supply of semiskilled labor or apprentices available at 60 cents an hour?

A. Yes, sir; there was a lot of men I knew.

Q. 36. At the prevailing wage?

A. Yes, sir.

Cross-examination by Mr. WATSON:

X Q. 39. Was Marshall working with you, Mr. Garlick, in building No. 1?

A. No, sir; he wasn't working with me. I was putting base down in the hall, in the corridor, and he was in the room, inside. I was right at the main entrance on the first floor.

X Q. 40. Was Marshall in the room by himself?

A. No; I know Knox was in there with him, and I don't know else.

X Q. 41. What was Marshall doing?

A. Putting down base and border.

X Q. 42. How much was Marshall receiving on the job?

A. I wouldn't know about that. I didn't have anything to do with the time. All I knew was, Mr. Dodd called Mr. Godbey or Mr. Knox—

X Q. 43. As a matter of fact, Mr. Garlick, wasn't Marshall receiving 45 cents an hour?

A. I couldn't tell you what it was.

X Q. 44. What kind of work was he doing?

A. You mean in this room?

X Q. 45. Yes.

A. It was quarry tile base and border around the room.

X Q. 46. He was doing skilled work, wasn't he?

A. Someone in there was; him or Coffey; one.

595 X Q. 47. Wasn't Marshall doing skilled labor, skilled work in there, and should have been receiving \$1.10 an hour for his work?

A. I couldn't say that. I don't remember the third man in the room, or if there was one.

X Q. 48. Do you remember all of the boys that were on that job?

A. I can recall a good many.

X Q. 49. You have worked on other jobs with Mr. Dodd, haven't you?

A. Yes, sir.

X Q. 50. What was the last job?

A. Kingstown or Phoebus or Hampton, whatever you call it.

X Q. 51. That is the Old Soldiers' Home?

A. Yes, sir.

X Q. 52. What were you receiving on that job?

A. \$1.00 per hour.

X Q. 53. That was the prevailing union wage at Hampton?

A. Well, I am not sure about that.

X Q. 55. Now, did Mr. Dodd rule on your work down there?

A. Yes, sir; he was directly over us.

X Q. 56. Did he require you to pull out any of your work and do it over again?

A. I don't remember.

X Q. 57. Did he require you, up at the Roanoke job, to do your job over?

A. No, sir; I never did anything over yet.

596 X Q. 58. Was he reasonable—

A. I would like to change that.

X Q. 59. Pardon me. Go ahead.

A. The quarry tile in the lobby of Building No. 2—I worked on that with the other men and we had some trouble with that.

X Q. 60. Tell us what trouble you had.

A. The windows were low, six inches above the floor, and the light come in—that was the only light that came in the room and that shone across the tile like headlights on the highway and gave it an ocean wave effect.

X Q. 61. What caused that?

A. I couldn't say whether it was the fault of the tile setters, or all of it combined.

X Q. 62. He required you to do that job over?

A. We did it over. I don't know whether Mr. Wilson did it—

X Q. 63. Did you consider that an unreasonable ruling, to do that part of the job over?

A. No.

X Q. 64. You wouldn't call that first class work, would you?

A. No; it didn't look right.

X Q. 65. It didn't look right to you as a marble man?

597 A. There was a book of specifications that caused it, in this way: That the tile setter, sent in there to do the job by himself, should have given a larger joint, space the tile farther apart and eliminated some of it.

X Q. 66. You don't consider his ruling then unreasonable?

A. No.

X Q. 67. Was he unreasonable on the job at Hampton?

A. No, sir.

X Q. 68. You knew of some of his rulings at Hampton, didn't you?

A. Well, I don't know just what you mean by that. I can think of one ruling that he made that I think was unreasonable then. In speaking of the rulings, there is one he was very emphatic about, and that was the numbers racket there, and he tried to clear that up. I was trying to think of something he made a point of.

X Q. 69. I had reference to the tile setting.

By the COMMISSIONER:

X Q. 70. I think Mr. Watson is referring to his general supervision of the work, what he required you to do. In that respect, how did you look on his rulings and what he required you to do?

A. He wanted the work done right and was very reasonable in that.

Mr. WATSON. I believe that is all.

598 R. X Q. 78. Just a minute, Mr. Garlick. Did Mr. Wilson ever set down the amount of work to be performed by each man, each day?

A. When he hired us, he told the men what he would have to have.

R. X Q. 79. What he expected you to do?

A. Yes, sir.

R. X Q. 80. How much per day were you to do; how many feet?

Mr. DOYLE. What class of work?

Mr. WATSON. Quarry tile, base, and border work.

599 The WITNESS. He asked for 150 feet of each, I believe it was.

By Mr. WATSON:

R. X Q. 81. One hundred fifty feet of each per day?

A. Yes, sir.

R. X Q. 82. Now, if a man did not perform 150 feet per day, did Mr. Wilson charge the difference to his salary for that particular day?

A. Not that I know of.

R. X Q. 83. Were you ever docked for not doing 150 feet a day?

A. No, sir.

R. X Q. 84. Do you know of any of the other men who were—who may have been charged for that, for not doing 150 feet a day?

A. No, sir.

Mr. WATSON. That is all.

(Witness excused.)

Redirect examination by Mr. DOYLE:

R. D. Q. 179. Mr. Godbey, what is a reasonable setting, per day, linear feet, of a unit, a mechanic, a helper and laborer on base and border?

A. I should say about two hundred feet a day.

R. D. Q. 180. About two hundred feet per day?

A. Yes, sir; we had men that actually did that 600 much and more.

R. D. Q. 181. What is a reasonable setting, per day, on a quarry tile floor, straight feet?

A. Six by six quarry tile?

R. D. Q. 182. Yes, straight feet.

A. One unit could do about four hundred feet a day.

R. D. Q. 183. That is with the use of a mechanic and helper?

A. Yes, with your helper and common labor to mix the mortar for you.

R. D. Q. 184. What is a reasonable ruling on quarry tile base, linear feet?

A. The base alone?

R. D. Q. 185. Yes, setting per day.

A. Well, a lot of it depends on just how big your areas are. If you have large rooms to work in and you will have your work straight away, you can make better time than in a small room.

R. D. Q. 186. With reference to this hospital job, what would have been a reasonable ruling for that type of work?

A. I should say 300 feet.

R. D. Q. 187. Three hundred feet per day?

A. Yes; that is the base alone.

R. D. Q. 188. The quarry tile base alone?

A. Yes, sir; 6 x 6. Naturally, the smaller the tile the less you can set.

R. D. Q. 189. What is a reasonable setting, per day, on 601 ceramic tile floor, per square foot, on a job like the Roanoke Hospital job?

A. I should say 250 square feet a day.

R. D. Q. 190. Two hundred fifty square feet a day?

A. Yes, sir.

R. D. Q. 191. What is reasonable with reference to lineal feet of tile base?

A. Lineal feet, you said?

R. D. Q. 192. Yes.

A. Three hundred feet, I should say. You mean ceramic tile or quarry tile?

R. D. Q. 193. Ceramic tile base.

A. You won't put in quite as much ceramic as you will quarry tile. You won't get over 250 feet of ceramic base. You can put in more quarry tile base than you can ceramic base.

R. D. Q. 194. What is a reasonable setting, per day, of wainscoating and cove, square feet?

A. About ninety square feet would be the average day's work.

602 R. D. Q. 195. Do you know Cecil Marshall?

A. Yes, I know him. I have known him for fifteen years.

R. D. Q. 196. Where is he now?

A. He is in Roanoke, working for J. H. Marsteller.

R. D. Q. 197. Where is he, what is he doing?

A. He is a semiskilled mechanic.

R. D. Q. 198. Tile setting work?

A. Yes, sir; the same trade, tile and marble.

R. D. Q. 199. Do you know why he was let out on this Roanoke Hospital job.

A. Yes, sir.

R. D. Q. 200. Why?

603 A. Because he couldn't keep up with the other mechanics.

After he raised him to mechanic, he couldn't do anywhere near as much work as the other men, so we let him go.

By the COMMISSIONER:

R. D. Q. 201. Do you know whether he has ever worked as a mechanic since then?

A. No, sir; he never has with us, and to my knowledge he never has with that company.

Mr. DOYLE. That is all.

By the COMMISSIONER:

R. D. Q. 202. These figures which you gave setting forth the linear feet, or square feet, do you understand that these figures were the average figures, or the maximum figures?

A. They will vary. If you have a small space, with a lot of corners, it will slow your work down and you won't get as many square feet a day as if you have large rooms, with long straight walls to work on.

R. D. Q. 203. But the figures you were giving were the reasonable average figures?

A. Yes, sir; that would be about the average, when part of your work is what we call clear work and the other is cut up; you would have that much work.

By Mr. DOYLE:

R. D. Q. 204. You would have some little difference with reference to the mechanic, the particular mechanic?

A. Yes, sir; one mechanic will do more work than the other. You will never get two men who will do exactly the same number of feet a day.

604 By Mr. WATSON:

R. D. Q. 205. What type of rooms did you have up there at the Roanoke Hospital?

A. At the Veterans' Facility?

R. D. Q. 206. Yes.

A. We had large rooms and small rooms; we had ceramic tile, we had quarry tile, we had wainscoting tile, bathrooms, toilets, etc.

R. D. Q. 207. While you were up there, did any of your mechanics quit the job because they were pushed by Mr. Wilson?

A. No, sir; I don't remember any quitting. I remember firing two boys because they didn't do enough work.

R. D. Q. 208. Did any of them complain to Mr. Dodd, that you know of, about the amount of work that was laid out for them, each day?

A. Yes; I remember the two distinctly.

R. D. Q. 209. Were those the two fellows that you fired?

A. Yes, sir; after I fired them, then they complained to Mr. Dodd. They were fired because they didn't do enough work.

R. D. Q. 210. Those were the only two?

A. Yes, sir.

605-607 R. D. Q. 211. Who were those men; do you remember?

A. Gilchrist and Didlake.

R. D. Q. 212. What was the matter with them?

A. They weren't even close to the other mechanics in production. In other words, if you have 25 mechanics on a job and they are all doing close to 100 square feet of tile a day and you have two men, who, day after day, do just 65 to 70 feet, you know there is something wrong with those men; that they either are not mechanics, or are not working; and I fired them because they weren't close to the other men's averages.

R. D. Q. 213. Do you remember what experience they had had as tile setters?

A. They were out-of-town men and I had never worked with them before, but they came here claiming to be mechanics with mechanics' cards, so I put them to work.

R. D. Q. 214. What kind of man is Mr. Wilson to work for?

A. He is all right, or I wouldn't have been with him the 12 years that I have been.

By Mr. DOYLE:

R. D. Q. 215. Not a driver?

A. No, sir. Sometimes we will go out on a job and stay three or four months and never see him. He sends our checks on pay day, and we never see him. I worked on a State job at Petersburg, the Central State Hospital at Petersburg, and I was there about a year and three months and I didn't see him over three times in that year and three months. So with me in Petersburg and him in Roanoke, he couldn't do much driving.

By Mr. WATSON:

R. D. Q. 216. What part of the country did these two men come from?

Mr. DOYLE. You mean Gilchrist—

Mr. WATSON. Gilchrist and Didlake.

The WITNESS. They were Virginians, because we hadn't exhausted the State supply entirely. We had to use local men first, and then men in the State, and then men outside of the State to get mechanics.

By Mr. WATSON:

R. D. Q. 217. Do you know who furnished these two men?

608 A. Who furnished them?

R. D. Q. 218. Yes; did they come through the Reemployment Service?

A. No, sir; they came to me on the job with union cards, claiming to be tile setters.

Mr. WATSON. I believe that is all.

Mr. DOYLE. That is all.

(Witness excused.)

C. B. Wilson was recalled and in answer to interrogatories testified as follows:

609

Direct examination (resumed) by Mr. DOYLE:

Q. 175. Mr. Wilson, will you kindly identify that, please?

A. That is a letter from Captain Feltham to Mr. Blair, dated December 6, 1934.

Q. 176. Referred to you by Mr. Blair?

A. Yes, sir. This has to do with the men who I was using on the grinding machines in grinding the terrazzo, which I was paying 45 cents an hour to, but due to Mr. Dodd's ruling that a man was either a mechanic or a helper, and we were not permitted to use any semiskilled labor—that is a semiskilled labor job and I wanted to use them on it—then they made the ruling that it would have to be a dollar and a dime and I—

Q. 177. Per hour?

A. Per hour, and I refused—

Q. 178. A dollar and a dime per hour, why?

A. Because he said a skilled mechanic should grind those floors, and I took issue with him and refused to pay \$1.10 an hour, because that wasn't usual and customary in the trade; and neither does a mechanic like to do that kind of work, because he is above it. That is classed as semiskilled labor and we employed people for that purpose and paid them the intermediate scale.

Q. 179. Now, do I understand the terrazzo work was just a small part of the work out there?

A. The terrazzo was a very small part; approximately \$1,400 was the total contract.

Q. 180. The total estimated cost of the contract?

A. Of the total contract price, we got \$1,400-odd for it.

Q. 181. The labor and material?

A. That is right.

Mr. DOYLE. We will offer that in evidence as Plaintiff's Exhibit No. 68.

By Mr. DOYLE:

Q. 182. Now, please identify that letter, Mr. Wilson.

A. This is a letter that I wrote to Mr. Algernon Blair's office, for the attention of Mr. C. W. Roberts, dated December 7, 1934, in which I protested the ruling of the inspector—

Q. 183. About this terrazzo grinding?

A. Yes, sir.

Q. 184. About the payment of—

A. The payment of semiskilled labor. I told him he would not allow us to use that and we attempted to do this work with common labor—

By the COMMISSIONER:

Q. 185. You refer to the letter which has just been introduced as Plaintiff's Exhibit 68, that is, the letter of December 6, 1934?

A. No; December 7th is this letter.

By Mr. DOYLE:

Q. 186. Referring to Captain Feltham's letter of the 6th?

A. Yes, sir.

Mr. DOYLE. I offer this as Plaintiff's Exhibit No. 69.

Mr. WATSON. No objection.

The COMMISSIONER. Received and marked "Plaintiff's Exhibit No. 69."

(Said letter, dated 12/7/34, from Wilson to Roberts, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 69," and made a part of this record.)

By Mr. DOYLE:

Q. 187. Identify this, please (Mr. Wilson).

A. This is a letter that Mr. Roberts, Superintendent, wrote my firm, for my attention, on December 10, 1934.

Q. 188. About the grinding of the terrazzo?

A. Yes, sir; this is a complaint about the grinding work not going fast enough and being done right.

Q. 189. The grinding of the terrazzo floors?

A. Yes, sir.

Mr. DOYLE. We offer that in evidence as Plaintiff's
612 Exhibit No. 70.

Mr. WATSON. No objection.

The COMMISSIONER. Without objection, it will be received and marked "Plaintiff's Exhibit 70."

(Said letter, dated 12/10/34, from Roberts to Wilson, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 70" and made a part of this record.)

By Mr. DOYLE:

Q. 190. Mr. Wilson, will you identify this letter, together with the two accompanying letters fastened to it?

A. This is a letter that I wrote to Mr. Algernon Blair's field office, for the attention of Mr. Roberts, dated December 11, 1934, in which I enclosed letters from the McClamroch Company, at Greensboro, North Carolina, and from H. M. Francis & Company, of Richmond, Virginia, contractors in the same line of business as myself, supporting my contention that the grinding of terrazzo floors was semiskilled labor.

Mr. DOYLE. I offer that in evidence as Plaintiff's Exhibit 71.

Mr. WATSON. No objection.

The COMMISSIONER. Without objection, it will be received as Plaintiff's Exhibits 71-A, 71-B, and 71-C.

(Said letters from Wilson to Blair; the McClamroch Company to Wilson; and H. N. Francis & Co. to Wilson, so offered and received in evidence, were marked, respectively, "Plaintiffs' Exhibits 71-A, 71-B, and 71-C," and made a part of this record.)

613 By Mr. DOYLE:

Q. 191. Will you identify that carbon copy—rather, to this photostatic copy of a letter dated December 12?

A. This is a photostatic copy of a letter that was written by my firm, by Mr. J. N. Fuhrman, executive office of the International Terrazzo Contractors' Association, which letter was in response to a question from me about this same letter of semiskilled labor. My letter was dated December 7, 1934.

Q. 192. I will withdraw that one, because that isn't the letter I am looking for. Will you identify this carbon copy of this letter?

A. A carbon copy of this letter came to me—the letter was to Captain Feltham by Algernon Blair's field office, and I received this copy.

Q. 193. What is the date of it?

A. December 12, 1934.

Q. 194. Is that the same letter that is in this call on the Veterans' Bureau, photostatic copy of a letter dated December 12, 1934?

A. This seems to be a photostatic copy of the original of this letter.

Mr. DOYLE. I offer in evidence the letter of Algernon Blair to Captain Feltham, dated December 12, 1934, with the accompanying enclosures.

Mr. WATSON. There is no objection.

The COMMISSIONER. Without objection, the exhibit offered will be received and marked "Plaintiff's Exhibit 72."

(Said letter, dated 12/12/34, from Blair to Feltham, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 72;" and made a part of this record.)

By Mr. DOYLE:

Q. 195. Will you identify that letter from Captain Feltham to Algernon Blair, turned over to you by Mr. Blair?

A. Yes; this is a letter from Captain Feltham to Algernon Blair's field office, dated December 14, 1934.

Q. 196. About the same subject matter, terrazzo grinding?

A. That is correct. That is the letter in which they insisted on the skilled mechanics being employed.

Mr. WATSON. No objection.

Mr. DOYLE. I offer this letter in evidence.

The COMMISSIONER. Without objection, it will be received and marked "Plaintiffs' Exhibit No. 73."

(Said letter, dated 12/14/34, from Feltham to Blair, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 73," and made a part of this record.)

By Mr. DOYLE:

Q. 197. What is this document here?

A. This is a statement which I asked our timekeeper to prepare, relating to the classification of the grinding machine men. The attached list are these mechanics and they simply express their opinion here.

Mr. WATSON. This is just collateral evidence, Your Honor.

615

By Mr. DOYLE:

Q. 198. Do you know these signatures; do you know these men are?

A. Yes; this is Jim Howard, and he is a marble setter and——

Q. 199. Were they employed by you at the time?

A. Yes; surely, they were right on the job. That is where we got that.

Q. 200. And obtained by Mr. Knox, under your direction?

A. Yes; I asked him to get this, to let Mr. Feltham know what was customary in the trade.

By the COMMISSIONER:

Q. 201. And that was done at the time indicated on that paper?

A. Yes, sir; at my request.

Mr. DOYLE. I offer that in evidence.

Mr. WATSON. No objection.

The COMMISSIONER. It will be received and marked "Plaintiffs' Exhibit 74."

(Said classification statement, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 74," and made a part of this record.)

Mr. DOYLE. I now offer in evidence letter dated December 15, 1934, signed "Algernon Blair, by T. E. Davinney," addressed to Chief, Construction Service, U. S. Veterans' Administration, through Captain P. M. Feltham, together with the accompanying enclosures produced on call by the Veterans' Bureau.

Mr. WATSON. No objection.

The COMMISSIONER. Without objection, it will be received and marked "Plaintiffs' Exhibit 75."

(Said letter, dated 12/15/34, from Davinney to Veterans' Administration, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 75," and made a part of this record.)

By Mr. DOYLE:

Q. 202. Can you identify this letter, Mr. Wilson?

A. This is a letter that Mr. Earl wrote to——

Q. 203. Earl who?

A. Earl Davinney wrote to Mr. Blair's office, for the attention of Mr. Clarke, under date of December 18, 1934.

Q. 204. Delivered to you by Mr. Blair's office?

A. Yes; it was. That is where I got it.

Q. 205. With reference to this same subject matter?

A. Yes; in connection with terrazzo grinding.

Mr. DOYLE. I will offer that in evidence as Plaintiffs' Exhibit No. 76.

Mr. WATSON. No objection.

The COMMISSIONER. It will be received and marked as "Plaintiffs' Exhibit 76."

(Said letter, dated 12/18/34, from Earl Davinney to Blair, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 76," and made a part of this record.)

617 The COMMISSIONER. Mr. Doyle, in connection with these exhibits which are coming in—what is the purpose in connection with them; to show the action which you took in connection with the protest, or to establish that these men who assisted the mechanics should be classified as helpers? The reason I ask the question is this—

Mr. DOYLE. Whether they are directed to proof of damages, or not?

The COMMISSIONER. Yes.

Mr. DOYLE. These letters are directed to the issue with reference to the arbitrary ruling by Mr. Dodd and Captain Feltham, with reference to the nonuse of semiskilled labor on tile, terrazzo and marble work, and also showing the position that they took with reference to the terrazzo work.

The COMMISSIONER. Well, I thought perhaps that was it, rather than possible proof on the proper classification, because you would hardly put in letters of that kind as proper proof—as proof on the proper classifications, but rather as to the attitude of Mr. Dodd in making the classifications.

By Mr. DOYLE:

Q. 206. Will you identify these, please?

618 A. Yes; after getting these letters and this argument about the grinding of the terrazzo, we were notified by Mr. Roberts out there that we would—that the matter had been settled on us paying for semiskilled labor for this grinding and, therefore, we went back and got the time that all of this labor had worked on this terrazzo, and reimbursed them to the extent of 15 cents per hour more. There are seven of these sheets attached together.

Q. 207. Then what was the result of the final dispute on the terrazzo grinding?

A. That is the figure that we paid them, 60 cents an hour for helpers, the labor that we had come in there we paid them 60 cents an hour after the work was all done, and this is the receipt for it.

By the COMMISSIONER:

Q. 208. How did you happen to pay them 60 cents instead of \$1.10?

A. Because we were notified by Blair's office that 60 cents was the semiskilled rate and was the proper rate to apply.

By Mr. DOYLE:

Q. 209. What the Commissioner is getting at is, how was the dispute finally decided by the Department?

A. I have no positive identification that the Department decided this way, but the fact that Blair's office notified me it was to be settled on the basis of semiskilled labor, I assumed that
619 the Department had agreed that semiskilled labor was the proper classification for those grinders.

Q. 210. And not \$1.10?

A. And not \$1.10.

Q. 211. In other words, you never paid them \$1.10?

A. I didn't. I didn't pay them \$1.10.

Q. 212. You paid them the difference between 45 cents and 60 cents an hour?

A. Yes, sir; as these receipts here will show.

Mr. DOYLE. We offer them in evidence as Plaintiff's Exhibit No. 77.

Mr. WATSON. No objection.

The COMMISSIONER. They may be received and marked "Plaintiffs' Exhibit 77," the seven receipts.

(Said seven receipts, so offered and received in evidence, were marked, collectively, "Plaintiff's Exhibit No. 77," and made a part of this record.)

By Mr. DOYLE:

Q. 213. Can you identify this letter, please? I might say it is a letter produced on call on the Veterans' Bureau.

A. This is a photostatic copy of a letter dated December 24, 1934, which I sent to Congressman Woodrum, with another letter.

Q. 214. Who is this letter addressed to?

A. This letter is addressed to the Executive Officer of the Public Works Administration, Washington, D. C. That shows the letter accompanying this that I wrote to Congressman Woodrum, protesting about this thing.

620 Q. 215. Now, Congressman Woodrum filed that with the Department?

A. That is the letter I got from him that said he did, so I guess he did.

Q. 216. What was the purpose of this letter that you addressed to the Executive Office of the Public Works Administration?

A. We had continuously complained to Mr. Blair's field office that we were being penalized, that we were losing a lot of money, and I wanted to seek some relief, and Blair said he couldn't do anything about it. So I took it on myself to write the Executive Officer this letter, and a letter to Congressman Woodrum, asking if he would present this matter to the Public Works Administra-

tion and saying that we were being discriminated against and that was not according to my contract.

Q. 217. In what way were you being discriminated against? To what does this apply?

A. Because of this unjust and arbitrary ruling that a man was either a mechanic at \$1.10 or a laborer at 45 cents, and wouldn't let me use any semiskilled or helping labor to speed up my work; that we were just being penalized, and our losses were running considerable at that time.

Q. 218. The ruling of Mr. Dodd, the Government Inspector Dodd?

A. Yes; Inspector Dodd.

621 Q. 219. And applicable to the tile, terrazzo, and marble work?

A. Yes, sir.

Q. 220. Now, will you identify that letter, please?

A. This is a letter from C. A. Woodrum, Congressman, dated December 26, 1934, to me, in answer to my letter of the 24th, in which I enclosed this letter here of December 24th to the Executive Officer of the Public Works Administration.

Mr. DOYLE. I will offer in evidence, now, the letter of December 24, 1934, and also the other letters dated February 13, 1935, addressed by Mr. Wilson to F. F. Seward, Federal Projects Section, PWA, Washington, D. C.; also a letter dated February 13, 1935, addressed by Mr. Wilson to Mr. Seward; a letter dated March 1, 1935, addressed by W. P. Hazlegrove, of the law firm of Cocke, Hazlegrove & Shackelford, to Mr. Seward, Federal Projects Section, as found and produced by the Government upon call on the Federal Emergency Administration.

Mr. WATSON. No objection.

The COMMISSIONER. They will be received and marked "Plaintiffs' Exhibit No. 78."

(Said letter, dated 12/24/34, from Wilson to PWA, and accompanying letters, so offered and received in evidence, was marked "Petitioners' Exhibit No. 78," and made a part of this record.)

Mr. DOYLE. I will also offer in evidence a letter from Congressman Woodrum to Mr. Wilson, just identified.

Mr. WATSON. No objection.

622 By Mr. DOYLE:

Q. 221. You merely filed this through Congressman Woodrum as your representative?

A. That is right.

Q. 222. Any political significance attached to it?

A. No; no political significance attached to it, at all.

Q. 223. Why did you pick out Woodrum?

A. He is our Congressman here.

The COMMISSIONER. It will be received and marked "Plaintiffs' Exhibit 79."

(Said letter from Woodrum to Wilson, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 79," and made a part of this record.)

By Mr. DOYLE:

Q. 224. Will you identify those two letters, please?

A. This is a letter from C. A. Woodrum, dated January 25, 1935, to me.

Q. 225. Enclosing what?

A. Enclosing a letter from Mr. P. F. Seward, of January 22, 1935, to Mr. Woodrum.

Mr. DOYLE. I will offer them in evidence as Plaintiffs' Exhibit No. 80.

Mr. DOYLE. I now offer in evidence the claim of the Roanoke Marble & Granite Company, addressed to the United States Government, for \$8,629.98, produced on motion for call in this proceeding.

Mr. WATSON. No objection.

The COMMISSIONER. It will be received and marked "Plaintiff's Exhibit No. 84."

(Said claim of Roanoke Marble & Granite Company, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 84," and made a part of this record.)

The COMMISSIONER. Does it show, or does the record show when it was filed? There is an indication here that it was filed April 11, 1935.

By Mr. DOYLE:

Q. 241. Is that about right, Mr. Wilson?

A. Approximately correct; yes, sir.

Q. 242. Mr. Wilson, have you made a computation of the actual cost of labor and materials in the performance of these subcontracts on this Roanoke Veterans' Hospital job?

A. Yes, sir.

Q. 243. Will you kindly explain, for the purpose of the record, from what records you have prepared, this account of the actual cost of labor and materials in the performance of these contracts?

A. From our book and time sheets.

Q. 244. Now, taking the costs of the materials, those are in what books?

624 A. These are from our general books, which show that we paid for that much material on the job.

Q. 245. From your general books?

A. Yes, sir.

Q. 246. And from what records have you prepared your costs of labor?

A. From the books, and, subsequent to the books, the time sheets. Here are all of the time sheets.

Q. 247. You have all of the time sheets here?

A. There are all of the time sheets there [indicating].

Q. 248. Now, if you will kindly refer to that claim which you put in to the Veterans' Bureau, Plaintiff's Exhibit 84, did you also prepare a schedule of the actual costs in that claim?

A. I think it was the actual labor cost in that claim. I think we prepared only the labor at that time.

Q. 249. Only the labor costs?

A. Yes, sir; here it is, right here [indicating]. We prepared the labor costs on the claim only.

Q. 250. Referring to page 7 of the claim, labor costs \$18,615.44?

A. That is the actual labor costs on the jobs; yes.

Q. 251. And how did you prepare your cost of overhead expenses there?

A. The cost of the overhead expenses is taken from the books of all overhead items and divided, and you get the percentage of such overhead items. You know what the overhead is, insurance, taxes, interest, and whatnot; the usual items.

Q. 252. What percentage have you got there?

A. For the year 1934 it is 17.6 percent.

Q. 253. And that is made from an actual computation, is it?

625 A. Yes, sir.

Q. 254. An actual computation of the actual overhead expenses for that year?

A. Yes. This is the sheet showing the various items and the net sales and the percentage of overhead; 17.6 percent that year.

Q. 255. Now, referring again to this exhibit which you have identified here, the actual cost of labor and materials, including the overhead, totals \$46,617.43?

A. That is correct.

Q. 256. Did you actually incur these expenses set out in that statement for that year, on that job?

A. Absolutely.

Q. 257. Did you pay those expenses?

A. Yes.

Q. 258. Including the percentage of the overhead, the actual overhead to the cost?

A. We paid all of the overhead, and this is the percentage of the total volume of business, and we charged this much to this volume here.

Q. 259. Do you know that that statement is correct?

A. Yes, sir.

Q. 260. Made by you or under your supervision?

A. Made under my supervision by Mr. Walters, our bookkeeper, and he and myself made it together.

Q. 261. And you have the books here from which you could be cross-examined and testify?

A. Yes, sir; he has the books right here.

Mr. DOYLE. We offer that in evidence as Plaintiffs' Exhibit No. 85.

Mr. WATSON. No objection.

The MEMBER. It may be accepted and marked Plaintiffs' Exhibit 85, subject to further examination of the man who had charge of the books, and with the understanding that the books are here in court and available for examination.

(Said computation of cost of labor and materials, so offered and received in evidence, was marked "Plaintiffs' Exhibit No. 85," and made a part of this record.)

By Mr. DOYLE:

Q. 262. Now, referring to that Exhibit 85, have you made a break-down of the actual costs of labor shown thereon at a cost of \$18,615.44?

A. Yes, sir.

Q. 263. When did you make that computation?

A. I can't give you the exact date, but it was made, of course, after the job was finished. I guess this was made about April of 1935.

Q. 264. Was that the one that is included on page 7 of your claim, Plaintiffs' Exhibit 84?

A. Yes, sir; it is identical. Yes; it is the same thing.

Q. 265. And from what records did you prepare that computation?

A. From the time sheets.

Q. 266. And you have the time sheets here?

A. Yes, sir.

Mr. DOYLE. We will offer that in evidence as Plaintiff's Exhibit No. 86.

The WITNESS. I prepared this myself.

Q. 268. Now, referring to this last exhibit, Plaintiffs' Exhibit 86, showing the mechanics' hours and the hours of labor, have you prepared a summary schedule from the time sheets?

A. Yes, sir.

Q. 269. Showing a break-down of those labor hours?

A. Yes; this is by weeks and hours.

Q. 270. And you know it is made from the same time sheets?

A. Made from the same time sheets; yes, sir.

Q. 271. And you know it to be correct?

A. Yes, sir.

Mr. DOYLE. We offer that in evidence as Plaintiff's Exhibit 87.

628 By Mr. DOYLE:

Q. 272. You made that statement, yourself?

A. I did; I made it myself.

Q. 273. And that last Plaintiffs' Exhibit No. 87—is that the same as appears on page 9 of your claim, Plaintiffs' Exhibit No. 84?

A. Yes, sir.

Q. 274. Now, Mr. Wilson, will you kindly explain—or, have you made a computation of the loss or damages that you suffered on this contract?

629 A. Yes, sir.

Q. 275. Explain how you figured that total.

A. I estimated my labor on the contract to be \$10,404.75, that is the direct labor cost, to which I added the estimated overhead of \$1,560.70, giving me a total of labor and overhead of \$11,965.45. The actual labor costs were \$18,615.44, and the actual overhead for that year was 17.6 percent, or \$3,276.32. That is a total of \$21,891.76. The difference is the actual loss that we suffered on this job, \$9,926.31.

Q. 276. Now, in your official claim to the Department, did you make any claim or computation for loss or damage on account of the excess overhead costs?

A. Yes; we made a claim, but we did not include any overhead in that claim.

Q. 277. So that, in this computation, you have included—

A. We have included overhead, the estimated overhead and the actual.

Q. 278. How long did it take you to complete this job?

A. We were on this job from the latter part of August until approximately February 12, 1935, about five and one-half months. We should have—under normal conditions, we would have completed this job. I think, easily, in three months.

Q. 279. What was the time that you originally estimated in your estimate?

A. I estimated it at three months.

Q. 280. And what was the cause of the delays running over 25½ months?

A. Well, we had this ruling out there about we couldn't use a semiskilled laborer, and that just naturally tied us up and we couldn't go ahead fast enough, we couldn't turn the work out.

Q. 281. Was there any other reason that held you up, that you recall?

A. Well, there may have been times that we were held up for a short while on materials; there might have been some delays in that.

630 Q. 282. Were you held up on account of the contractors' delays in any way?

A. We were held up, at the beginning of the job, on account of the contractors' delay; he would never get ready to go ahead; and later, we had some trouble with some mechanical contractor out there, and he was delayed, and finally we got started.

By the COMMISSIONER:

Q. 283. That was before you ever started, wasn't it?

A. His trouble was before, but it seemed that they couldn't get the thing straight, so we could go ahead and prosecute the job like we should go ahead on a job; in other words, carry out this regular motion on the job and follow it right through; if you do that, it goes through economically, and if you don't go through that way, it gets in a stir and causes everybody trouble on the job.

631 The COMMISSIONER. Was there any variation in the amount, in the quantities, as between your estimate and what you actually had to do, Mr. Wilson, or was—

Mr. DOYLE. The materials, you mean?

The COMMISSIONER. Yes.

The WITNESS. You mean the quantities required on the job?

The COMMISSIONER. Yes.

The WITNESS. There is always a variation in every estimator's work. For instance, I can take off 25,000 feet of a certain article, and another estimator will come right along and make it 25,300 feet, but with the ordinary computation, it is about as correct as any estimator would come to the quantities.

By the COMMISSIONER:

Q. 286. That is, the estimated quantities as shown on your original estimate, which is Plaintiffs' Exhibit 64—the quantities shown are substantially the quantities which you actually had to use in carrying out the contract?

632 A. Yes; there may be some variation, but substantially, it is correct.

By Mr. DOYLE:

Q. 287. How about with reference to the materials; how did you check out on the materials?

A. We checked out pretty close to my original estimate on materials. I think I probably bought a little more tile, and maybe I bought a little more sand and cement, or bought a little less cement—or I bought a little less sand and probably a little more cement. You can't estimate a job in advance accurately as we can after we know what is in the job, but I think my quantities substantially were correct, my estimate.

Q. 288. Now, Mr. Wilson, have you done any work since, or additional work, for the Roanoke Veterans' Hospital?

A. Yes; they had a job out there last year by the Northeastern Construction Company, of Winston-Salem, North Carolina, as general contractor, and we did the interior tile and terrazzo on it.

Q. 289. What was your system; were you permitted to use semiskilled or experienced help in that case?

A. That was under the Public Works Administration, the PWA, and the schedule provided that we had to pay \$1.10 for mechanics and 60 cents for semiskilled labor and 45 cents for common labor.

633 Q. 290. Were those the wages that you paid on that job?

A. That was the minimum wage we paid. The common labor we didn't pay any more than 45 cents, and some of our best mechanics we gave \$1.25 to. They were very fast and speedy men, and one or two of our helpers we gave 75 cents to, because they were very good.

Q. 291. You employed the unit system, the same practice?

A. Yes, sir.

Q. 292. Including marble and terrazzo?

A. We did all that out there.

Q. 293. Was there a Government inspector on that job?

A. Yes, sir; surely.

Q. 294. From the PWA or the Veterans' Bureau?

A. No; he was Mr. Patton, of the Veterans' Department.

Q. 295. A Government inspector?

A. Yes, sir.

Q. 296. Do you know Mr. Dodd?

A. Yes.

Q. 297. He is in the court room here?

A. Yes; that is Mr. Dodd right there [indicating].

Q. 298. And Mr. Feltham?

A. That is Captain Feltham right there [indicating]. I didn't know Mr. Dodd or Captain Feltham previous to the time of doing this job.

634 Q. 299. You didn't?

A. No, sir.

Mr. DOYLE. Mr. Kilpatrick would like to ask a couple of questions.

By Mr. KILPATRICK:

Q. 300. I want to ask you, this last work that you did at the Veterans' Hospital, that you just testified about, when Mr. Patton was the inspector, did he ever suggest that you should not be allowed to use helpers on your work?

A. No, sir.

Cross-examination by Mr. WATSON:

X Q. 301. Mr. Wilson, you have been engaged in business since 1924; is that correct?

A. Since 1914.

X Q. 306. Did you examine PWA Bulletin 51?

A. I believe we did, because the specifications come with all of those documents in them.

X Q. 307. Before you bid on it, you read over the specifications?

A. At the time I make my proposal, we go into all that to find out what we have got to bid on.

X Q. 308. Did Mr. Blair inform you concerning the labor provisions of his contract with the Government?

A. In my original contract with Mr. Blair, he specified the skilled rate and the labor rate.

X Q. 309. That is, the skilled rate and the unskilled rate?

A. And the common labor rate; yes.

X Q. 310. He told you that the contract only provided for two classes of labor?

A. No, sir; he didn't tell me that, at all.

635-636 X Q. 311. What did he tell you?

A. He referred me to the specifications.

X Q. 312. What did you find in the specifications?

A. That the rates were to be as set forth; \$1.10 and 45 cents; and subject to the PWA document.

X Q. 313. And then you went ahead and you made your estimate accordingly?

A. Yes, sir. Now, in February, I believe it was—he gave us the contract in December, and I believe it was February when he sent us a copy of this document, and sent in the signed addenda.

X Q. 314. Is that introduced as an exhibit?

A. Yes, sir.

X Q. 315. And you say there is an addenda?

A. Yes, sir; which was a printed document of that form; that is all.

X Q. 316. And then you were familiar with the provisions, the labor provisions of the contract?

A. I assumed I would have a right under Section 18 to use intermediate labor, which I thought then and think now is correct.

X Q. 317. When you started in on this job, how much intermediate labor did you employ?

A. My plan was to employ one skilled mechanic and two helpers and sufficient common labor to keep the materials before them, but I never had a chance to put my plan in operation. I was called, after about the second week, as Mr. Godbey testified here this morning—he called me to come out there, that he had trouble, and I went out there, and Mr. Dodd told me a man was either a mechanic or was a laborer; that there was no intermediate scale for that job, nor could be used any.

X Q. 318. How many PWA contracts have you executed, prior to this one?

A. Prior to this one or after this one?

637 X Q. 319. Prior and after, all together.

A. It would be impossible for me to answer that question accurately until I went back and got all of the dates and jobs off of my books.

X Q. 320. You know the difference between a Federal PWA job and a State PWA job, do you not?

A. I have worked on Federal PWA and have not worked on a State PWA. They were all Federal PWS's.

638 X Q. 321. How many Federal PWA contracts have you entered into?

A. The Blacksburg and the Fredericksburg ones were all State institutions, done with PWA funds and we worked under the PWA regulations; and the school over at Halifax, and several of these Post Offices under PWA.

X Q. 322. Now, the job at Halifax, and what was the other place?

A. Blacksburg.

X Q. 323. Those were State jobs, were they not?

A. State buildings under PWA regulations.

X Q. 324. But you were to employ the labor; is that not right, under the State rate of pay?

A. No; that isn't correct.

X Q. 325. Tell us what rate of pay you were to follow.

639 A. The wage rates on all of these jobs were set out in the specifications. That is the first thing they show you, absolutely how much you have to pay, and we figured to pay that. For instance, at Halifax, I think the rate was 85 cents, and we didn't pay any attention to that, but paid \$1.00, because that was our rate. When the rates were over what we were paying, we

figured it up at their rates; when they were under, we figured our rates.

X Q. 326. What were the State rates here in Virginia; the prevailing rates?

A. I don't know.

X Q. 327. Do you know what the Federal prevailing rates were in Virginia?

A. \$1.10 on this job.

X Q. 328. And you paid \$1.10 on the job?

A. Absolutely, for all mechanical labor. There was no kick-back, no come-back, and I have got receipts there to show it.

X Q. 329. You have performed a number of contracts with the Government?

A. Yes.

X Q. 330. Built various Post Offices. Have you filed any claims against the Government prior to this claim?

A. Never before or since. This is the only claim I have ever had against the Government, and I hope I never have another one.

640-641 X Q. 331. Now, tell us what class of labor you used on these other jobs, Mr. Wilson; these other Federal jobs?

A. We used mechanics, skilled labor, semiskilled and common labor.

X Q. 332. Just three classes?

A. Yes.

X Q. 333. And when you bid on this job here, you were of the opinion that you were to use three classes here?

A. Yes, sir.

X Q. 334. When did you discover the fact that you couldn't use three classes of labor on this job?

A. When Mr. Dodd notified our man out there and he, in turn, called me on the phone, and I went out there and Mr. Dodd told me that I couldn't use anything except mechanics or laborers, any man that touched a tool was a mechanic and would have to get a dollar and a dime an hour.

X Q. 335. Mr. Wilson, as a matter of fact, weren't you using an intermediate class of labor on that job, but only paying them 45 cents an hour, the common labor price?

A. That isn't true. The record speaks for itself, and there it is on the time sheet, and any semi-skilled man got 60 cents an hour.

X Q. 336. You furnished the Government a copy of your pay roll each month?

A. I think it is every week.

X Q. 337. Every week, I meant.

A. Yes.

X Q. 338. What type of shop do you operate, Mr. Wilson?

A. What type of shop?

X Q. 339. Yes.

A. With reference to open or closed?

642 X Q. 340. Yes.

A. Open mostly, but closed at times.

X Q. 341. You had been using open shop prior to this contract, this Roanoke contract?

A. It varies. At times, we used an entire union organization, and at other times we don't. We fit ourselves in with the scheme of things as they exist, what they are at the time. When this job came up here, they immediately organized a union and made it a union job. We have no objection to unions, so we could use union men, and we used union men on this job. At the present moment, we are using all nonunion, open shop, and I should say half of our men now belong to the union.

643 X Q. 342. When you made your estimate on this job for Mr. Blair, you were of the opinion that you could operate as an open shop, were you?

A. Yes, sir; because I was of the opinion—hearing my thought on that, Mr. Watson, I figured I could use open shop, use my own organization, so far as that organization could take care of the work; and then I would be permitted to go out and employ more men. It was my definite conviction, at the time of figuring the job, that I would use mechanics, semiskilled and common labor which were required on the job. Then it developed that we either had to get all of our skilled and semiskilled labor through the Reemployment Office, or we would have to get our skilled labor through the union, and a union card would be accepted, or a card from the Reemployment Office. So we had to have all of our men, our regular men go down and register, and we got some of this help back later on—I don't know when it was—and the mechanics all went into the union, and we got them back. That was the situation at the beginning of the job.

X Q. 343. Now, as the job progressed, you exhausted the list in the Reemployment Office; is that right?

A. Mechanics?

X Q. 344. Yes.

A. No; we never did go to the Reemployment Office for mechanics.

644 X Q. 345. Well, for labor?

A. We exhausted the union labor list here in Roanoke. Then the rule was that we would have to apply to the next nearest cities, and the union did that. Then you gradually fan out, and we went down to Richmond, and we got people from there, and

we got them from Norfolk, and after we exhausted all of them, and got all of the bums there was around, and then we finally went to Washington and got some of those.

X Q. 346. Did they have any bums up in Washington?

A. Yes, we got some bums from there, too.

X Q. 347. Did you exhaust the list here, the union list of mechanics here, in Roanoke?

A. Yes, sure; we exhausted the entire list.

X Q. 348. Did you ever apply to the Reemployment Office here in Roanoke?

A. For mechanics, you mean?

X Q. 349. For mechanics, yes.

A. No, sir.

X Q. 350. Or for labor?

A. Yes, sir; altogether for labor, after this ruling.

X Q. 351. Various exhibits have been introduced here, Mr. Wilson, with reference to your complaints to Mr. Blair on these alleged arbitrary rulings of Mr. Dodd and Captain Feltham. Do you know if Mr. Blair ever appealed to the Contracting Officer in Washington on this same question?

645 A. I don't know whether he did, or not. I know I protested to everybody I could get to in his organization. He was up here one day, himself, and I protested in person to him. I told him the situation was very serious with me, and we were losing money very rapidly.

X Q. 352. What did he tell you to do?

A. Well, he said he would look into it. That is as far as I got with him.

X Q. 353. You never appealed to the Contracting Officer at Washington on this arbitrary ruling?

A. The appeal that I made was to the Executive Officer of the Public Works Administration. That was along about December—

X Q. 354. You didn't take the matter up with Colonel Tripp in the Veterans' Administration?

A. No, sir; I had no right to go over the contractor's head.

X Q. 355. You did go over his head in going to the PWA, didn't you?

A. I did. I don't think I had a right to do that under Mr. Blair's contract, but that is an independent right that I assumed. Mr. Dodd would not deal with us directly; it was always through the general contractor, which is right and proper; and that was the reason that, when he made this arbitrary ruling, I immediately went over to Blair's office and got C. W. Roberts, to let him come over there, and hear it. I asked him to put it in writing, and

646-648 he wouldn't do it, and when Roberts came over there with me, I asked him to put it in writing, and he wouldn't do it. But I wanted Mr. Roberts to hear it, and he did hear it. That was one of the complaints we had about Mr. Dodd on the job. He went around and talked too much to our men.

X Q. 356. Did Mr. Dodd require your men to pull out work, old work and do new work?

A. Yes, sir.

X Q. 357. How many times was work done over?

A. Well, that is wrong. The question was was the work done over, and maybe I didn't understand.

X Q. 358. Maybe I didn't make myself clear. In his inspections he saw a few defects. How many of these defects did he require your men to perfect?

A. I can't tell how many it was, Mr. Watson. The few of them that were major, that were of major importance, that I handled myself. One of them was that they condemned a lot of tile in the shower rooms on account of the color, and they were clearly in error on that, because the marble had varied colors in it and we refused to pick it up, and we didn't. I handled that one, myself. Another major complaint was in main building No. 2, in the lobby. There was 9 x 9 or 8 x 8 quarry tile used in it, and on account of the size, the standard specifications allow a certain amount of warpage there. They had two large windows over here (indicating) that were shedding light right down on it, and that magnified the joints and the warpage. They condemned that, which was unjust and should not have been condemned, because they were standard quality tiles.

By the COMMISSIONER:

X Q. 359. Mr. Wilson, were these instances, these instances of when you were required to correct something, or to do something over that you ordinarily find on a job of this kind?

A. Oh; yes, sir. This was an absolutely arbitrary and unjust condemnation in the lobby. We took it up, though, just the same; we had to do it.

By Mr. WATSON:

X Q. 360. And in taking it up, did that delay you in the progress of your work?

A. Why, certainly. You can't take it up and get it down overnight. It takes time. We had to get new material. Things like that are serious on a job.

X Q. 361. Was that delay included in your five and one-half months delay that you testified to on direct examination?

A. I beg pardon?

649-650 X Q. 362. Is that delay included in the five and one-half months delay that you testified to on direct?

A. Yes, sir; I can't tell you whether it would cause a week or ten days delay, but all of these things accumulate.

X Q. 363. I am getting into the five and one-half months delay.

A. Not delay, sir. It was five and one-half months to finish the job.

X Q. 364. Five and one-half months to finish or to complete the job?

A. Yes, sir.

X Q. 365. You testified that some of the delay was chargeable to contractor Blair. Can you tell us approximately how much time could be charged to Blair?

A. It is impossible to state specifically.

X Q. 366. I don't want it specifically; I just want approximately.

A. It is the economical way to do a job. Any builder, I think, any man that is in the building business will tell you it is the economical way on a job to progress right through and if you are delayed anywhere, that upsets your economical production on the job, because then you have got to go ahead and double up your shifts, or what not, in order to gain your time back. That is when you reach the uneconomic point of the operation. That happened to us on this job. I imagine, at one time, there we had approximately 35 or 40 mechanics, which was all out of reason, no sense to it, when the job should have been prosecuted without over 20 mechanics.

X Q. 367. I don't believe you have answered my question, Mr. Wilson. Will you give us approximately the amount of delay chargeable to Blair, or the delay that you figure—

A. If this job had come off on schedule time, we would have started there earlier in the summer and would have come out of the job along in the early fall.

X Q. 368. You started in the latter part of August 1934?

A. Yes, sir; and didn't get through until February.

X Q. 369. February 12, 1935?

A. Something like that; yes.

651 X Q. 373. Were you delayed in getting on to the job?

A. Certainly, we were delayed when Mr. Blair—he didn't get the thing ready for us to go on.

By the COMMISSIONER:

X Q. 374. But that delay is not included in this five and one-half months, is it? That delay for getting on the job isn't included in the five and one-half months, is it?

A. No.

By Mr. WATSON:

X Q. 375. That is no part of this claim whatsoever?

A. No part of my claim is for the delay then. What we are claiming here is the cost to us—that it cost us twice as much money to do this, on account of this arbitrary and unfair ruling.

X Q. 377. And you also testified that some of the delay in the five and one-half months was chargeable to the contractor; is that right?

A. I can't tell you exactly how much. It was maybe three or four weeks. I can't tell you.

X Q. 378. Do you wish to infer that all of the time was chargeable to the Government?

A. No; I want you to infer that I can not tell how much time was lost, because it is certainly too much for me to remember.

X Q. 379. However, there was some delay by the contractor, and how much you do not know?

A. That is correct. That is about as far as I can answer.
652 The WITNESS. It is my policy to pay good men and fast men—if we could bring the unit production down. I pay them on the basis of what they can earn for me.

By the COMMISSIONER:

X Q. 392. Even if it is more?

A. Even if it is more; yes. I proved that in this case, because I paid them \$1.25, because they were producing for me.

By Mr. WATSON:

X Q. 393. On this Blair contract, were the men producing for you out there?

A. No, sir. I say, as a general proposition, they weren't; no, sir; * * *

653 X Q. 395. Now, Mr. Wilson, you had no connection with the Government contract whatsoever?

A. My contract was with Algernon Blair.

X Q. 396. You made all of your complaints to Blair, and you were paid by Blair?

A. I was made by Blair and I made complaints to Blair, and I made complaints to Mr. Dodd about this ruling.

Redirect examination by Mr. DOYLE:

R. D. Q. 399. What do you mean by complying with the contract with reference to skilled and unskilled labor?

A. Well, when this ruling was made that we couldn't use anything but skilled labor or common labor, then we used skilled labor and common labor and tried to get along.

R. D. Q. 400. Was it your understanding, under the contract, that you could use semiskilled labor also?

A. That was my understanding of the contract, yes, sir; but he wouldn't allow me to use it.

654 R. D. Q. 401. Was it your understanding in employing semiskilled labor, that you were permitted to do that?

A. Yes, sir.

R. D. Q. 402. That that was a compliance with the contract?

A. I didn't comply with it in that respect, because he wouldn't allow me to use semiskilled labor. I thought I had that right, and I believed the contract gave me that right, but he wouldn't allow me to do that.

R. D. Q. 403. One question about these delays: Do you know what occasioned the delay of Contractor Blair in getting this building ready for you to put in this tile work?

655 A. Yes, sir; there was some fellow out there that blew up.

R. D. Q. 404. What do you mean?

A. I think he went bankrupt, a mechanical equipment man.

R. D. Q. 405. What kind of contractor?

A. The plumbing and heating contractor.

By the COMMISSIONER:

R. D. Q. 406. Were you familiar with that at the time you were getting ready to go ahead with your job?

A. We had a contract with Mr. Blair, and we were supposed to get our materials in line and ready for shipment, and we inquired from him as to the progress of the work. As we were getting along so slow, we were wondering what had happened, and I would go out there every once in awhile, and they finally told me that Redmond, I think that was his name, was bankrupt and the job was stopped.

656 R. D. Q. 407. Is your claim for damages or loss based on the delay on account of the buildings not being ready for you?

A. That has been a contributing factor there, but it is hard for me to say what amount, or any definite amount, because had these buildings been ready on schedule, we would have started on that job probably in the early summer, and we would have been out of there by fall; we would have had much better weather to have done our work in; but the way I have computed my losses here he is on this construction of this contract, not allowing us to use intermediate labor, which is an important thing on a job.

R. D. Q. 408. Just the excess labor cost?

A. That is all I have taken into consideration.

R. D. Q. 409. Is that included, in any way, in the amount which you have computed for your overhead?

A. Well, I have computed the overhead on the volume of business done, for each month for four months back, and while it may be my method is incorrect, I think it is correct. I computed it on the total volume of business done during the year.

R. D. Q. 410. So that the figure we have here as making up your claim represents the difference between your estimated labor costs and your actual labor costs on the job, together with the overhead on that volume of business?

A. That is correct.

R. D. Q. 411. Now, one more question: You referred to the PWA documents in answer to one of Mr. Watson's questions. Was that the PWA bulletin which I showed you this morning? You referred to it as a PWA document; is the thing you referred to PWA Bulletin No. 51?

A. This is it right here [indicating].

R. D. Q. 412. Showing the schedule of minimum wages, 657 Section 54, page 7?

A. Yes; and then it goes on with subsections down here.

R. D. Q. 413. And you had that when you made your estimate of labor costs?

A. Yes, sir.

R. D. Q. 414. Now, on this condemnation of tile work, you prepared an estimate of the cost of the labor and materials on that lobby work, to which you testified?

A. Yes, sir.

R. D. Q. Is this a copy of it?

A. Yes, sir; this is it.

R. D. Q. 416. State, for the purpose of the record, how much the labor cost was in performing the work on that condemned work?

A. The labor on this amounted to \$166.70, on this particular condemnation, which was in the Building No. 2 lobby.

R. D. Q. 417. \$166.70?

A. Yes, sir.

R. D. Q. 418. In your claim for damages, the way you have computed your claim for damages on this particular matter, showing the excess labor costs, did you also include—would that include this \$166.70? I guess it would. I am going to admit that for the purpose of the record.

658 A. I don't know. I believe it is included.

R. D. Q. 419. That is the actual labor cost of the job?

A. I think that is correct; it is included there. I just took all of the labor estimated and all of the labor actual, and that is it.

R. D. Q. 420. I understood you to say that, in your actual figures, you included all labor on the job?

A. That is right; that is a part of the labor on the job.

659

By Mr. DOYLE:

R. D. Q. 421. And was there any other major condemnation work of any kind?

A. No; that is the only major condemnation we had. The rest of it was only small stuff.

R. D. Q. 422. I may ask you just one more question. Just a minute, Mr. Wilson. The Roanoke Marble and Granite Company is the sole owner of this claim?

A. Yes, sir.

R. D. Q. 423. It has not assigned it to anybody?

A. No, sir.

R. D. Q. 424. And you have only been paid the amount of your contract price by Mr. Blair?

A. Yes, sir; we have been paid the amount of our contract and extra by Mr. Blair, paid in full.

R. D. Q. 425. Thirty-seven thousand and odd dollars?

A. Yes, sir.

R. D. Q. 426. And you received no payment or compensation whatever by reason of your claim to the Veterans' Bureau?

A. No, sir.

Mr. DOYLE. That is all.

Mr. WATSON. That is all.

(Witness excused.)

660

D. L. MARSTELLER, a witness produced on behalf of the plaintiffs * * * testified as follows:

By the COMMISSIONER:

Q. 1. State your name for the record.

A. D. L. Marsteller.

Q. 2. And your present business address?

A. 2011 Franklin Road, Roanoke, Virginia.

Q. 3. And your present occupation or profession?

A. It is identical with Mr. Wilson's in that respect, marble and tile and terrazzo, etc.

Q. 4. How long have you been engaged in that work?

A. Personally, since 1924.

Q. 5. And are you connected, in any way, with the
661 Roanoke Marble and Granite Company, in a financial way.

A. No, sir.

Direct examination by Mr. DOYLE:

Q. 6. Are you a competitive contractor?

A. Yes, sir.

Q. 7. Mr. Marsteller, I believe you are engaged in the business of installing and setting marble and tile terrazzo work?

A. That is correct.

Q. 8. Did you do the work in this present building we are in here?

A. Yes, sir.

Q. 9. The marble and tile and terrazzo work?

A. That is right.

Q. 10. And I understand you have been in business since 1924?

A. Well, I became associated with my father in this business in 1924.

Q. 11. The same business was carried on by your father, prior to 1924?

A. Yes, sir.

Q. 12. Did you put in a bid to Algernon Blair on the work at the Veterans' Hospital out here?

A. Yes, I did.

Q. 13. For the tile and terrazzo and marble work?

662 A. I placed a bid with Mr. Blair, then in Montgomery, on it, and I had previously given him a quotation, such as we would give all prospective contractors.

Q. 14. The same job that Mr. Wilson of the Roanoke Marble and Granite Company bid on?

A. The one we are talking about here; yes, sir.

Q. 15. What happened after you placed your bid with Mr. Blair? Did you go down to Montgomery?

A. Yes; I went down to Montgomery, and he told me before I left that Mr. Wilson had the contract.

Q. 16. Did you make any adjustment of your bid in Montgomery, your original bid?

A. Yes, I cut it a little bit.

Q. 17. Can you identify this [indicating]?

A. Yes, that is my figure.

Q. 18. Is that your bid?

A. Yes, sir.

Q. 19. Is this your original bid here, dated November 29, 1933?

A. That is the original bid, yes, sir.

Q. 20. Addressed to—

A. We didn't address it to any particular one, because there were so many figures we didn't put the general contractor's name at the head.

Q. 21. This is your exchange of telegrams about going down?

663 A. That is right; yes, sir.

Q. 22. What is this tacked on the front; is that your writing?

A. Yes, that is my writing there. I made that in Mr. Blair's office at that time.

Q. 23. Is that the reason of your bid down there?

A. It is; yes, sir.

Q. 24. That was made when you were down there?

A. Yes, sir.

664 Q. 25. What is the amount of your main bid on this job?

A. The price is divided up into two or three sections here. The amount of the main bid would be arrived by adding together the three figures, \$1,947, \$28,400, and \$1,200.

Q. 26. The \$1,947 was for setting the marble?

A. And the soapstone, yes.

Q. 27. \$28,400 for tile and terrazzo and—

A. The marble required on that job, which Mr. Blair asked to be given as a separate item, he should be allowed to either furnish the material, himself, if he wanted to, or we were to furnish it.

Q. 28. \$1,200 for the material?

A. Yes, sir.

Q. 29. Referring to your main bid, referring to your original bid of November 29, 1933, can you state from it the amount that you bid on the alternate items, Item No. 1, for instance, for tile and terrazzo work only?

A. Item 1-A?

Q. 30. Yes, alternate 1-A.

A. 1-A was the Administration Building, I believe.

Q. 31. Building No. 1, yes.

A. Yes, it is. The bid on tile was \$262 and on terrazzo was \$1,214.

Q. 32. And Item No. 1-B, how about that, tile and terrazzo?

A. That was \$4,206 for tile, and terrazzo, \$1,934.

665 Q. 33. And Item 1-C, Building No. 5, the Recreation Building?

A. That was for tile; \$528, and for terrazzo \$664.

Q. 34. And there is an item of 1-C-A, I think; is that for terrazzo?

A. Yes; it is, terrazzo, \$8.50.

Q. 35. That is including the lumber and material for those alternate jobs?

A. Yes.

Mr. DOYLE. We would like to offer these in evidence, if we can, as Plaintiffs' Exhibit No. 89.

Mr. WATSON. No objection.

The COMMISSIONER. It will be received and marked "Plaintiffs' Exhibit 89," consisting of four sheets.

(Said four alternate bids, so offered and received in evidence, were marked "Plaintiffs' Exhibit No. 89," and made a part of this record.)

By Mr. DOYLE:

Q. 36. Mr. Marsteller, do I understand that, on this terrazzo and tile work, you had the option to use either terrazzo or quarry tile for the base and border?

A. That is correct; yes, sir.

Q. 37. And do you recall, or can you tell from your estimate, which you bid on, then?

A. We figured on using terrazzo.

Q. 38. Do you know what Mr. Wilson figured on using?

A. No; I don't know what he figured on using, not unless
666 he told me.

Q. 39. But you did figure on using terrazzo for the base and border?

A. Yes; I figured on putting in a terrazzo border.

Q. 40. Can you testify how you made your—how much of this bid or both of these bids, tile, terrazzo and marble, and the alternates to which you have testified here, were made, 1-B, 1-C, and 1-C-A—how much of that bid is for the cost of labor on this job?

A. I had estimated that the labor on the base bid on alternates A, B, and C, would be \$9,813.22.

Q. 41. And that covered the tile, terrazzo, and marble work?

A. And the soapstone; yes.

By the COMMISSIONER:

Q. 42. Was that estimate made at that time?

A. That was the estimate, sir, before the bid was ever filed.

By Mr. DOYLE:

Q. 43. I believe in preparing your bid--will you state the method that you used in estimating the amount of your total bid on this work? Did you use the unit cost system?

A. I used the unit cost; yes.

Q. 44. Which included the unit factor for both labor and material?

A. That is right.

667 Q. 45. You are testifying now as to your labor costs, and this is the computation—

A. This is the computation that I have got here in my hand, which has been made within the last week, from the figures, the unit cost of labor figures which were made prior to the putting in of the bids. In other words, I never tabulated my entire labor costs at the time.

Q. 46. That is what I am getting at.

A. Yes; that is correct.

Q. 47. And your figure of \$9,813.22 applies solely to labor, and does not include any extra cost for overhead?

A. No; there is no overhead; in fact, it does not include quite all of the labor. In taking this job here and going back over it, I found that—that very often if you—that the materials are figured at a price which would enable the material probably to be gotten into the room where the mechanic was engaged in working.

Q. 48. About how much should be added to the labor cost estimated here for that factor?

A. I would say, maybe, roughly, 10 percent.

Q. 49. Ten percent of \$9,813?

A. Yes, sir.

Q. 50. Or \$981?

A. Yes, sir; about \$981.

Q. 51. Do you believe that is an entirely reasonable estimate of the labor cost on this job, as you originally figured it?

A. I thought so at the time; yes, sir.

668 Q. 52. Now, the total of your base bid, plus these estimates on the alternates, A, B, C, and C-A, aggregate—have you added them up, can you state how much they total?

A. No, sir; I haven't added them. It is simply a matter of computation. It seems to come to \$38,411.50.

Q. 53. Now, what is the common practice in the trade, in using skilled and semiskilled labor for tile and terrazzo work?

A. The contract unit is a mechanic setting and a helper, or sometimes he might be called an improver, who operate as one gang. We use that method as a method of apprenticeship. In other words, we have a helper who stays with the mechanic all of the time, handling some of the tools, to do some work, and to work under the direction of the mechanic.

669 Q. 54. What is your wage scale in this particular bid on those mechanics, apprentices, and so on?

A. If I recall correctly, the mechanic was \$1.10 an hour; the helper I don't know, I don't recall what rate it was, but I imagine probably about 60 cents, and I think that the common labor was 45 cents. I haven't refreshed my memory on that.

Q. 55. In making these bids, did you figure on the use of semi-skilled or apprentice labor along with the mechanics?

A. Yes, sir.

Q. 56. Is that your present practice, today?

A. Yes, sir.

By the COMMISSIONER:

Q. 57. How long has that been your practice?

A. Ever since I have been connected with the business.

Q. 58. That is, a mechanic and a helper—

A. A mechanic and a helper working as a unit.

Q. 59. And laborers with the two?

A. No; on a little job, we have a helper, but on a job like this we would have a number of laborers to do the actual work of getting the materials to the men.

Q. 60. But a small job—

A. On a small job, two men in the gang.

By Mr. DOYLE:

Q. 61. That is, just a small house bathroom job?

670 A. Yes; or even larger than that.

Q. 62. On a big job, you would use common labor along with your mechanic and apprentice?

A. We have a hotel down here in Waynesboro, and I think we had three or four gangs of two men each, a mechanic and a helper, and probably one supernumerary to help in the work.

Q. 63. Common laborer?

A. Yes.

Q. 64. Do you use a bull gang, in addition to that, in moving the materials on a big job?

A. On big jobs; yes, sir.

Q. 65. The same applies to marble work?

A. The same applies to marble work.

Mr. DOYLE. That is all. Cross-examine.

Cross-examination by Mr. WATSON:

Q. 68. Do you run an open shop or a closed shop?

A. An open shop now. There never has been a closed shop that I know anything about.

Q. 69. Have you performed any Government contracts?

A. Well, this building was a Government contract.

Q. 70. You did this job here?

A. Yes, sir.

671 X Q. 71. Did you ever perform or execute any PWA contract?

A. Yes; we have

X Q. 72. You are familiar with PWA contracts?

A. Well, I can't say familiar, but I know some of the provisions of them.

X Q. 73. Are you familiar with the labor provisions?

A. Yes, the labor provisions—if you mean that you shall pay a certain minimum wage, and that you shall pay weekly, and that you shall give the pay sheets to the Government, and those things; yes.

X Q. 74. You are a competitor of Mr. Wilson's?

A. Yes, sir.

672 B. F. MOOMAW, a witness produced on behalf of the plaintiff, testified as follows:

By the COMMISSIONER:

Q. 1. State your name for the record, please.

A. B. F. Moomaw.

Q. 2. And your present address?

A. My business address is the Chamber of Commerce, Roanoke, Virginia, located at 13 West Church Avenue.

Q. 3. And I believe your profession is—

A. I am Secretary of the Chamber of Commerce.

Q. 4. And you are a lawyer by profession?

A. No, sir; just a plain business man.

Direct Examination by Mr. KILPATRICK:

Q. 5. Mr. Moomaw, have you ever been connected with the Federal Emergency Administration of Public Works, which we sometimes call the PWA?

A. Yes, sir; I was a member of the Virginia Advisory Board of the PWA for a period of approximately from August 1, 1933, to March 1, 1934.

Q. 6. What were the functions of that Board?

A. The Advisory Board was composed of three, and that Board had complete jurisdiction with respect to receiving applications in Virginia for PWA loans and grants, and to make recommendations with respect to these applications covering such loans
673 and grants to the Federal Administration of the PWA.

Q. 7. What, if anything, did your Board have to do with the determination of labor rates under PWA contracts?

A. Early in the fall, or some time in the fall of 1933, after we had started to function under the PWA in Virginia, the question of intermediate rates to be paid for certain services as between two specified by the PWA, that is, \$1.10 for skilled work and 45 cents for common work, we asked the Governor of Virginia, who was, at that time, Governor Pollard, to call a State Labor Conference. Do you want me to detail that?

Q. 8. Yes.

A. We asked him to call a State Labor Conference, to confer with respect to what would be the reasonable rates for certain intermediate services as between 45 cents for the common labor and \$1.10 for the skilled labor.

Q. 9. At this point, Mr. Moomaw, was that in response to any communication received from the Public Works Administration?

A. Yes, sir.

Q. 10. I hand you a document and ask you what that is.

A. This is a mimeographed copy of a communication from H. M. Wade, Deputy Administrator of the Federal Emergency Ad-

ministration of Public Works, dated October 11, 1933, addressed to all State Engineers and Members of all State Advisory Boards.

Mr. KILPATRICK. We offer that in evidence.

674. Mr. WATSON. No objection, subject to verification.

The COMMISSIONER. The exhibit offered may be received as Plaintiff's Exhibit No. 90, subject to the privilege of counsel for the defendant of verifying the document.

By Mr. KILPATRICK:

Q. 11. Now, Mr. Moomaw, as a result of the receipt of that letter, I believe you testified that you asked Governor Pollard to call this conference?

A. Our Board did; yes, sir. In addition to this, there had been some conversations between the members of our Board, or our State Engineer, with Colonel Wade, with respect to these labor questions.

Q. 12. That conference was called?

A. Yes, sir.

Q. 13. Where was it held?

A. It was held in the City of Richmond.

Q. 14. Did you attend it?

A. Yes, sir.

Q. 15. About what time was that?

A. It was held on October 27, 1933.

Q. 16. Who else was present?

A. Mr. Kilpatrick, there were a great many men there. The conference was held in the hall of the House of Representatives at the State Capitol, and it was completely filled, and I do not have here a record of those who were in attendance. I

675 can only give from memory a few who were there. Governor Pollard was there, who called the conference, and he opened the conference. All three members of the PWA Advisory Board were there, Mr. J. W. Johns, The Chairman of the Board; R. B. Preston, of Norfolk, and myself, and our State Engineer, J. A. Anderson was present. John Hopkins Hold, at that time Commissioner of Labor of the State of Virginia, was present. Mr. Hughes—and I don't recall his initials at the moment—the President of the Virginia Federation of Labor, was present. The President of the National Bricklayers Union—I don't know just now the style of the organization, but the President of the National Bricklayers' Union was present, and I don't recall his name. The Secretary of the Virginia Federation of Labor was present, but I don't recall his name, either, but he lives at Newport News. Just at the moment, I don't recall his name. And then there were a great many architects there; some contractors were there, and representatives of the counties and cities and some of the towns of Virginia, who were interested in PWA loans and grants.

Q. 17. Was there an observer from the PWA in Washington there?

A. Yes, sir. I can give you his name in a minute.

Q. 18. I don't think that is important. What happened at that conference?

A. The conference discussed the whole question, of course, of what would be the proper scale of wages for these intermediate services. In order to bring something definite to the conference for consideration, our State Engineer had prepared what was thought to be the fair and reasonable wages for these intermediate services, and they were referred to the conference as a matter of suggestion. They were not agreeable, particularly to those there who were representing organized labor at the conference. After a long debate with respect to those suggestions, they appeared not to be making much headway, and I suggested to the conference that the Governor of Virginia, Governor Pollard, be requested to appoint a Committee of Six, composed of two to represent organized labor, or labor; two to represent the construction fraternity—I use that term “construction” in its broader sense, architects, contractors, and those dealing in building materials—and two to represent that group in Virginia who would be the borrowers of the PWA money, the counties, school boards, towns, and municipalities; and that the Committee be requested to devise and propose intermediate rates to be paid on PWA jobs in Virginia between the Federal set-up of 45 cents for common labor and \$1.10 for skilled; and when that Committee made its report to the Governor, and the Governor announced the conclusions of that Committee, that those rates should be the PWA rates in Virginia applicable on PWA projects.

Q. 19. What happened in response to that suggestion on your part?

A. The suggestion was immediately agreed to by all of those present, no one dissenting. Mr. Hughes, the president of the Virginia Federation of Labor, immediately said that the suggestion was entirely agreeable to organized labor, and the suggestion was adopted unanimously by the conference.

Q. 20. And was such a committee appointed by the Governor?

A. Yes, sir; it was.

Q. 21. Did it promulgate a schedule of wage rates?

A. Yes, sir.

Q. 22. I hand you two attached papers here, and ask you if you can identify those?

A. Yes, sir.

Q. 23. State what they are.

A. The first is a letter from me, as secretary of the Roanoke Chamber of Commerce, addressed to Mr. Algernon Blair, dated December 2, referring to him being the low bidder on the Veterans' Hospital here—shall I read the letter?

Q. 24. No, sir. What is the paper attached to it?

A. The second paper is the labor wage scale which this committee I have just referred to agreed upon, and which was published by the Government as the PWA wages for Virginia.

Q. 25. Before I offer this in evidence, have you compared this particular document with your file copy of the letter you wrote Mr. Blair, and the schedule?

A. Yes, sir.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It will be received and marked "Plaintiff's Exhibit No. 91."

678

By Mr. KILPATRICK:

Q. 26. Mr. Moomaw, what, if anything, did you do about the use of that scale on the building of the Veterans' Administration Hospital here at Roanoke by Mr. Blair?

A. I think Mr. Blair started out to operate on that scale, and this schedule, as set forth, was posted at the contractor's office on the job as showing the wages which should prevail.

Q. 27. Do you know Captain Feltham?

A. Yes, sir.

Q. 28. Did he ever make complaint to you about any of the rates appearing in that schedule?

A. I don't know that he made it in the way of a complaint, but he made some comment, yes; he talked with me about it.

Q. 29. Will you tell us, please, what occurred at that time?

A. I have here in my hand a copy of a memorandum which I prepared, covering a conference which Captain Feltham had with me with respect to the labor rates on January 10, 1934.

Mr. KILPATRICK. I assume there is no objection to Mr. Moomaw refreshing his recollection from his memoranda?

By the COMMISSIONER:

Q. 30. That was something made at or about that time?

679

A. Made immediately after the conference, Your Honor.

By Mr. WATSON:

Q. 31. Pardon me, but what was the date of the conference you speak of?

A. January 10, 1934.

By Mr. KILPATRICK:

Q. 32. Will you tell the Commissioner what occurred?

A. Captain Feltham called at my office on the morning of this date, with a copy of the labor rates agreed to by the Committee of Six appointed by Governor Pollard, which should apply on public works jobs in Virginia, and informed me that organized labor objected to certain items in the schedule. He called particular attention to cement finishers, whose rate is listed in the schedule at 60 cents. He recognized this as very important work and thinks this rate should be at least 75 cents. The mixer rates are listed in the schedule at 60 cents, and Captain Feltham thinks this rate should be at least 75 cents. The truck drivers are listed at 50 cents and Captain Feltham thinks those operating big trucks and trucks with automatic loading and unloading devices should be paid at least 60 cents per hour.

The balance of the memorandum deals with other features of that conference, but that appears to be the only part of the memorandum that deals with his comment with respect to the scale of wages.

Q. 33. Did he criticize any other rates on your schedule than those that you have mentioned there, the cement finishers, I believe, and truck operators?

A. No, sir; I think not.

Q. 34. As a result of that conference what, if anything, did you do about his criticism of the rate schedule, Mr. Moomaw?

A. I don't recall that we did anything, Mr. Kilpatrick, but shortly after that, some of the men, who had been on this job, came and talked to us, but I don't recall that we did anything.

Q. 35. When was that occasion; do you recall when it was?

A. That was up in March. That was in March.

Q. 36. Will you give us, please, a sort of summary of what took place at that time?

A. I will have to refresh my memory by looking at some of my files here. On March 23—and I am referring to a letter that I wrote Mr. Blair at his address under date of March 26th, addressed to the attention of Mr. C. W. Roberts:

"Friday, March 23rd, the following four men, viz,

681 "P. N., Stanley, Salem, R. F. D. # 1,

"T. J. Cummings, 522 22nd Street N. W., Roanoke,

"R. T. Summers, Roanoke R. F. D. # 5,

"W. H. Windsor, 621 West Campbell Avenue, Roanoke called at our office and said that they had been working for you as rodmen tying reinforced steel at the rate of 60¢ per hour but that they had been laid off because you have had instructions not to

work anyone in that class of employment except skilled workmen at this rate of pay of \$1.10 per hour.

"These men do not claim to be skilled mechanics and they were therefore perfectly satisfied with the wages of 60¢ which you were paying and they do not wish to be laid off.

"It is our understanding that the tying of steel rods does not require skilled labor and that you would not be violating the P. W. A. labor regulations by using on such work the class of labor represented by the men named above.

"If entirely consistent with the policy of your office, will you please give us your authority for discontinuing these men, giving us, if you can, copies of any communications or instructions to you regarding the matter.

"Yours very truly,

"B. F. MOOMAW, *Secretary.*"

682 Q. 37. Now, then, what happened after that, in connection with that rodmen complaint?

A. Mr. Roberts gave me copies of some communications that he had from Captain Feltham with reference to the matter of working men in this classification.

Q. 38. Did you do anything to try to get Captain Feltham's ruling reversed?

A. We wrote Judge Woodrum about the matter. I don't recall that we did anything other than that, but we did take the matter up with Judge Woodrum, who is our Congressman, to see whether or not the matter could be worked out from his standpoint.

Q. 39. What did Judge Woodrum do?

A. Judge Woodrum conferred with certain officials of the Veterans' Administration.

Q. 40. Did Judge Woodrum ever send you any communication from the Veterans' Administration on the subject, that he had received?

A. Yes, sir.

Q. 41. Do you have that there in your file?

A. This is a letter from Judge Woodrum under date of April 3, acknowledging our letter to him under date of March 29th, and enclosure.

Q. 42. I hand you a letter on the Veterans' Administration letterhead, dated April 25, 1934, addressed to Honorable Clifton A. Woodrum. Did Judge Woodrum deliver that letter to you, as having been received from the Veterans' Administration?

A. Yes, sir.

Mr. KILPATRICK. I would like to offer that in evidence.

The COMMISSIONER. Without objection, it will be received and marked "Plaintiff's Exhibit 92."

By Mr. KILPATRICK:

Q. 43. Mr. Moomaw, in connection with this complaint by the rodmen as to their classification, you made an investigation of the question of whether they were skilled or semiskilled labor, as I understand it?

A. They admitted they were not skilled labor. They, themselves, admitted that they were not skilled labor, these four men who came to my office and whose names I read a moment ago.

Q. 44. As a result of the experience you had in connection with fixing the rates for the intermediate wage grades, would you say that men who did the work they were doing, placing and tying reenforcing steel, should be classified as skilled mechanics or at some intermediate grade?

684 A. I think they should be classed at some intermediate scale, because that work does not require a skilled mechanic to do it.

JOHN T. CLARK was recalled as a witness on behalf of the plaintiff and testified further as follows:

REDIRECT EXAMINATION

R. D. Q. 20. Now, I ask you to turn to the original Exhibit 46, which is in the same volume you have there. In the last column on Exhibit 46, headed "Salaries of Montgomery Office," do they include the salaries of Mr. Andrew and Mr. Ellingsworth for the entire period covered by that exhibit?

A. Not for the entire period, but for part of it.

R. D. Q. 21. Were their salaries for the period covered by Exhibit 53 also included in Exhibit 46?

A. Part of it has been. May I explain that, Mr. Kilpatrick?

R. D. Q. 22. Yes.

A. When Mr. Andrews came to Roanoke and stayed permanently on the job, his salary continued to be charged as a
685 part of the Montgomery office expense, occasionally, for the first month or two that he was there, and then it was charged as a part of the job expense when it became evident that he was going to have to stay on for a long period of time. Mr. Ellingsworth came up, and we charged his salary as a part of the Montgomery office expense.

R. D. Q. 23. You never did charge any of Mr. Ellingsworth's salary to the job expense?

A. No, sir. So, since we have been asked for their entire salaries under a separate heading, I have had to go back now, and in this computation of the Montgomery office expense take out that part of their salaries which had been charged as Montgomery office expense during this period.

R. D. Q. 24. Is this your recomputation of Exhibit 46?

A. It is; yes, sir.

Mr. KILPATRICK. We offer that as Plaintiff's Exhibit 46-A.

The COMMISSIONER. It may be received and so marked, with the same understanding as was had with respect to Plaintiff's Exhibit 46.

R. D. Q. 36. I ask you to turn to Exhibit 49. That exhibit, I believe, has already been explained to a certain extent by you in the record at the time it was introduced, but I just want to ask you a couple of questions about it. Next to the last item on the first page is the total cost for completing during June, July, and August, \$37,264.19. Will you explain what you mean by that entry?

A. The schedule on this exhibit shows the number of cubic yards of earth moved during each month, and the cost, per cubic yard, of doing that work. Starting in January with 5,000 cubic yards, we built up to a point where, in April and May, we were moving more than 20,000 cubic yards per month, and the cost averaged for those two months $21\frac{1}{4}$ cents per cubic yard. Had we been permitted to proceed at that rate of speed, moving more than 20,000 cubic yards per month, our cost for moving the balance would probably have been about that same amount, $21\frac{1}{4}$ cents, but it certainly would not have exceeded 22 cents per yard. So I have taken the remaining amount of earth to be moved after May, and figured it at 22 cents per yard, resulting in a figure of \$17,179.36, and added that to the cost up to that time, making the total cost we should have had for moving that earth of \$37,264.19. When we were delayed and the moving of it went away on over into the winter, in fact, clear through the winter and on up into February, the cost of moving it greatly increased, and the total cost to us of moving it was \$46,300.78.

R. D. Q. 37. By saying you were not permitted to do that, what do you mean?

A. That the mechanical equipment contractor was in our way to such an extent that we couldn't do it, having the whole area cut up with trenches and with the installation of sewers, water, gas, electric lines, and other utilities.

R. D. Q. 38. Now, will you turn to the second page of that same exhibit 49, and in the first paragraph on the second page there is a statement that, to that date, through October 1934, your labor costs for this work on roads, walks, and curbs was \$7,852.63. Was that figure taken from your books?

A. Yes, sir.

R. D. Q. 39. And that is correct, is it?

A. Yes, sir.

R. D. Q. 40. The correct cost to that time?

A. Yes, sir.

R. D. Q. 41. What about the figure of \$13,930 in the tabulation just below that? Is that the actual total cost of this work, as shown by your books?

A. Yes, sir.

688 R. D. Q. 42. Now, turning to the third page of the same exhibit, what do the figures in the right-hand column, or the two right-hand columns represent? In showing these unit rates on which those were based, what do they represent?

A. The unit prices used there are the unit prices that we used in making up our estimate for the work.

R. D. Q. 43. What is the purpose of this computation on the third page?

A. To show the proportion of the total roads and walks work, the roads, walks and curbs which had been completed during the month of October, and we have used these unit prices to arrive at the value of the work done up to that point, as compared with the total value of the work.

R. D. Q. 44. Then the ratio of \$45,000-odd to \$60,000-odd, appearing on that third page, is 75.8 percent, mentioned on the preceding page; is that right?

A. Yes; as a matter of fact, as of that date, October 31st, the Government allowed us and paid us for more than 75.8 percent of the outside work.

R. D. Q. 45. Now, I will ask you to turn to Exhibit No. 50, entitled "Extra Cost of Building Exterior Scaffolds." In your Montgomery testimony, at page 440, I believe you stated that the prices used in this computation in Exhibit 50 were your own; that you had done the pricing?

A. Yes, sir.

R. D. Q. 46. I wish you would take those prices up in order, and state the source of the information on which you have based them.

689 A. I have shown the purchase price, per thousand feet, of lumber at \$25. That is the actual average cost to us, delivered at the job, of all of the lumber, of each class, that we bought for this contract. The item of \$18.00 per 1,000, labor for building

the scaffolds, is the estimated amount, based on my experience and observation, and arrived at after consulting with our superintendents who were actually in charge of the work, and securing their ideas as to the values, and we agree that it cost at least \$18.00 per 1,000 feet, board measure, to erect those scaffolds. The item of \$8.00 per 1,000 for the wrecking of certain lumber was arrived at in the same way, that is for wrecking and cleaning the lumber.

R. D. Q. 47. What do you mean by cleaning and wrecking?

A. Drawing the nails and preparing the lumber for other use, or getting what salvage value out of it we could, and stacking it up in order of the various sizes, where it could be drawn on for further use, if we had further use for it. The price of \$4.00 per keg for nails is approximately the average price that we paid at that time for nails, and is not an exact figure, nor is the 50 kegs an exact figure. To use 336,000 feet, board measure, of lumber in the erection of the scaffolds would require approximately 50 kegs of nails. That is arrived at as a result of our experience and knowledge of similar work.

R. D. Q. 48. Will you explain why you deducted from the total cost figure there the value of the necessary scaffolding for the cornice work?

690 A. If we hadn't had these outside scaffolds, but had worked from inside scaffolds, it would have been necessary for us to have some outside scaffolds built through the windows of the upper story, in order to get to the cornices, the wood cornice work and complete it; and also for items of swinging scaffolds from the various floors to bring the brick work up past that particular spandrel beam, or those spandrel beams that we might have had, and this figure of \$3,047.20 for that is our estimated cost of building those scaffolds I have just spoken of.

R. D. Q. 49. Now, Mr. Clarke, I ask you to turn to plaintiffs' Exhibit 51.

A. May I make one further explanation there?

R. D. Q. 50. Yes.

A. At the bottom of the page, we have shown the salvage value of 25 percent for all of the lumber purchased and used in those scaffolds. As a matter of fact, I am quite sure we never got anything like that salvage value out of it. Practically all of the buildings were scaffolded at the same time and the material used in those scaffolds was not of value for other work afterwards, unless we had similar work to do, and we had so little similar work to do, after it was all erected, that we couldn't salvage more than that, and I don't think we salvaged anything like that much. But we were trying to be very fair and allow that salvage value on the lumber.

691 R. D. Q. 51. Now, turning to Exhibit 51, Exhibit 51 was prepared by you, Mr. Clarke, I believe you testified?

A. Yes, sir.

R. D. Q. 52. The statements appearing therein are intended to be your statements?

A. Yes, sir.

R. D. Q. 53. I call your attention to the first paragraph and that tabulation of figures at the top of the page on form work and temporary buildings. Why do you say that you should have been permitted to use not less than three semiskilled workers with one skilled worker?

A. Because that is customary in construction work of that character, plus the fact that we had a Federal bulletin which listed the proportion of the semiskilled workers permissible with skilled workers on work of that character.

R. D. Q. 54. I show you Plaintiffs' Exhibit 39, and ask you if that is the Government document you had in mind?

A. It is; yes, sir.

R. D. Q. 55. Is that true of the other ratios mentioned in that exhibit?

A. Yes, sir; except that we have not, in every case, based it or used as many semiskilled workers as the job permitted under this document. We have based it on using less when we think that our general practice would have prompted us to use a smaller number of semiskilled to one skilled.

692 R. D. Q. 56. Now, Mr. Clarke, in Exhibit 51, you state the ratio of semiskilled workers to skilled workers on some classifications, but in connection with sheathing and subflooring, I don't believe you state the ratio there. What is the proper ratio?

A. Four semiskilled to one skilled.

By the COMMISSIONER:

R. D. Q. 57. Are those carpenters?

A. Yes; this is in work such as sheathing and subflooring, where there is nothing to do but to saw it to length and nail it down; it is rough work; and these ratios are in accordance with this document.

R. D. Q. 58. Now, what about framing and miscellaneous carpentering, what is the proper ratio there?

A. One skilled and one semiskilled.

R. D. Q. 59. Now, Mr. Clarke, this Exhibit 51 has been prepared by you, I believe, on the assumption that 55 cents per hour was the proper pay for the semiskilled grade of carpenter?

A. Yes, sir.

R. D. Q. 60. Have you prepared a similar—or, rather, have you computed your figures here by using the rate of 60 cents per hour, instead of 55 cents, for semiskilled?

A. Yes, sir.

Mr. KILPATRICK. That is purely a matter of arithmetic, Your Honor, but I would like for him to state, for the record, what his results show.

693

By Mr. KILPATRICK:

R. D. Q. 61. What do your results show as to the total claim, based on the 60-cent rate for semiskilled?

A. That would be \$26,354.19 as against originally \$30,451.01.

R. D. Q. 62. Mr. Clarke, I hand you three letters, attached together, and ask you to state what they are.

A. The first is a letter addressed to Algernon Blair and signed by Captain Feltham, the letter being dated March 22, 1934.

R. D. Q. 63. And what is the second one?

A. A letter similarly addressed, and signed and dated the same day.

R. D. Q. 64. And the third one?

A. A letter similarly addressed and signed and dated March 23, 1934.

R. D. Q. 65. Were the pencil marks appearing on these letters there at the time they were received?

A. I do not know, Mr. Kilpatrick. Those were received at our job office, rather than at our Montgomery office.

Mr. KILPATRICK. On the assumption that they were not, we would like to offer the letters in evidence, but we are not offering the pencil marks.

The COMMISSIONER. Without objection, the letters offered will be received and marked "Plaintiff's Exhibits 97, 98, and 99."

694 (Said three letters from Feltham to Blair, so offered and received in evidence, were marked, respectively, "Plaintiffs' Exhibits 97, 98 and 99," and made a part of this record.)

By Mr. KILPATRICK:

R. D. Q. 66. I call your attention to Exhibit 99. Did Mr. Blair comply with Captain Feltham's orders that he reimburse those men for the difference between the wages paid them and the rate proposed by him?

A. He did.

R. D. Q. 67. Do your records show the number of hours of labor by these rodmen on this Roanoke job?

A. Yes, sir.

R. D. Q. 68. What was the total number?

A. On the entire job, Mr. Kilpatrick?

R. D. Q. 69. Yes.

A. 8,730 $\frac{1}{4}$ hours reenforcing rodman work.

R. D. Q. 70. And what wages did you pay on that work, under this final ruling?

A. \$1.10 per hour.

R. D. Q. 71. You did that for the whole amount of time that you just mentioned, 8,000-odd hours?

A. Yes, sir.

R. D. Q. 72. You did that because you were ordered to do it?

A. Yes, sir.

695 R. D. Q. Well, now, if you had paid them 60 cents an hour, have you made any computation to show us what the difference would be between your labor costs at \$1.10 and 60 cents on the rodmen?

A. The difference between 60 cents and \$1.10 is 50 cents per hour and 8,730 $\frac{1}{4}$ hours at 50 cents would be \$4,365.12 $\frac{1}{2}$.

R. D. Q. 74. All right; now, if you will turn to Plaintiff's Exhibit 52, I will call your attention to the fact that you are claiming reimbursement for the loss resulting from this ruling with reference to rodmen of over \$8,800. What accounts for the differences between those two figures?

A. The amount of this claim is the difference between what it actually cost us to install that steel, under the conditions under which we were required to work at Roanoke, and the amount that we estimated it would cost to do that, had we been able to proceed with it, and we would have been able to do it at our estimated cost under normal and fair conditions.

R. D. Q. Now, the point I am getting at, Mr. Clarke, is that you have said that \$4,365 is the mathematical difference between paying your rodmen 60 cents an hour and \$1.10 per hour. What are the damages, in money, resulting to Mr. Blair from that ruling, if any? Why is your \$8,800 claim here that high, when the mathematical difference between applying the two rates is only \$4,500?

696 A. There are several reasons for it.

R. D. Q. Tell the Court what they are.

A. One is that we were required to do a great deal more work than is normal and customary in connection with this reenforcing steel. For instance, when the rods for a concrete column stick up through the floor slab, we have to pour the concrete for the column and give it time to settle slightly and set before the concrete of the beams and the slab above is poured; usually a period of 24 hours between those two pourings. Naturally, we pour the concrete for the columns so that the concrete gets on the reenforcing

steel of the slab and the beams above and those struts that are stuck up from the columns to tie the next tier of columns to. On this job, we were required to clean off every bit of that cement stain from the reenforcing rods the next day, before we were permitted to pour the concrete in the beams and the slabs.

R. D. Q. 77. Who required you to do that?

A. The inspectors on the job.

R. D. Q. 78. Is that necessary, in your opinion?

A. No, sir.

R. D. Q. 79. What else contributed to your loss, as a result of this ruling concerning the rodmen?

697 A. Many times the mechanical equipment men, who were very slow with their work and were always behind us, behind us in our progress, were in our way and were very greatly delaying the placing of the reenforcing steel, which made it cost more. At other times the steel was in place and we were ready to pour and we asked for an inspection, and the inspectors were a long time in coming to inspect the work. As a matter of fact, they required that we give them two hours' written notice before they would come and inspect work.

R. D. Q. 80. Did you ever have any such requirement as that on any other jobs that you have worked on, Mr. Clarke?

A. Never. We never have.

R. D. Q. 81. Did you ever hear of it being done anywhere else?

A. No, sir; usually, the inspectors are there watching and helping and are ready to inspect the work as it goes in. Then, these men would come to inspect the work, and quite often would find some very minor item to criticize, and would say that the work was not satisfactory, and say, "Fix it up and we will come back and inspect it again," and off they would go, and it would be necessary for us to fix up those minor items and then send for them again to come and inspect the work.

R. D. Q. 82. Well, in terms of money—that is what my question was getting back to—was it because you had idle labor because of these things that yours costs increased?

698 A. Certainly; and that required, in certain instances, that we would have reenforcing men to stand by while the concrete was being poured, so that, if any rods got pushed out of the way, the reenforcing steel man could straighten them up, rather than the man who was tamping the concrete in place, and that meant an extra man standing around doing nothing but watching all of the time, and being paid as a reenforcing steel man.

R. D. Q. 83. In your experience prior to this Roanoke job, has any Government inspector ever claimed, on the job that you were

connected with, that reenforcing steel rodmen were entitled to skilled mechanics' pay?

A. Not that I ever heard of.

R. D. Q. 84. In your opinion, what is the proper classification of a reenforcing steel rodman?

A. Semiskilled, without any question.

R. D. Q. 85. Why?

A. Because no particular skill is required. When we started this work, it was all being done by men who had previously been rated as common labor. They bring the steel up and drop it approximately into place. There is a foreman, who can read the plans and can direct them to straighten it up and tie the rods together with wire, and there is no particular skill required in doing that. The foreman directs the work and any laborer can learn, in a few hours, how to do it satisfactorily.

699 R. D. Q. 86. I had you this document and ask you to tell us what it is.

A. This is the specifications put out by the Federal Emergency Administration of Public Works for the construction of a housing project at Montgomery, Alabama, the specifications being dated March 9, 1935.

R. D. Q. 87. How did that come into your possession?

A. We had it in bidding on the work.

Mr. KILPATRICK. I would like to offer it in evidence.

Mr. WATSON. No objection.

The COMMISSIONER. Without objection, received and marked as Plaintiffs' Exhibit 100.

Mr. KILPATRICK. We would like for the record to show that, to save the Commissioner's time in digging through this large volume, that the purpose is to show the approved scale of wages appearing at the bottom of page 6 of Division One. There is listed the reenforcing steel work, semiskilled, 60 cents being the wage rate.

700 W. W. HOBBS, a witness produced on behalf of the plaintiffs, testified as follows:

By the COMMISSIONER:

Q. 1. Will you state your name for the record?

A. W. W. Hobbie.

Q. 2. And your present address, business address?

A. Post Office, Roanoke, Virginia, Box 1002.

Q. 3. And your present age?

A. I am 43.

Q. 4. Your occupation or profession?

A. President of the Roanoke Webster Brick Company.

Q. 5. You are not connected, in any way, with either Algernon Blair or the Roanoke Marble & Granite Company, are you?

A. No, sir; in no way.

Direct examination by Mr. KILPATRICK:

Q. 6. Mr. Hobbie, how long have you been in the brick business?

A. Since July 1922.

Q. 7. Have you ever been engaged in the building construction business?

A. Four years prior to that, I was superintendent of D. J. Shipp, and built a dormitory and built a mill out here, and several schools here in town, and a lot of work in Beckley, West Virginia.

Q. 8. Did you have any connection with the Roanoke Hospital job, on which Mr. Algernon Blair was the general contractor?

A. We furnished the common brick and tile, both the back-up and partition tile and some other small miscellaneous clay products.

Q. 9. When you speak of tile, are you speaking of the sort of tile that is used in floors?

A. Partition tile, hollow building tile.

Q. 10. In that connection did you have occasion to visit the job often while the work was going on?

A. It so happened that I lived in a location that was close to the hospital, and our factory is located nine miles east of Roanoke, and in order to facilitate the service, I used to go by there about once or twice a week, sometimes more than that, to see that the material was coming to the job properly, before I went to the office in the morning.

Q. 11. Do you know Captain Feltham, who was the chief Government inspector on the job, and his assistant, Mr. Dodd?

A. Yes; I know them both.

Q. 12. Did you come in contact with them on the occasions of your visits to the job?

A. Not in a great many instances, except two or three times when matters came up for discussion. My business of course, was with Algernon Blair, and the only time that I came in contact with Captain Feltham or Mr. Dodd was in looking around the job and seeing how things were going, and on several—I think on two or three occasions, when a matter of controversy came up.

Q. 13. Did you observe the manner in which they conducted the inspections on this job?

A. I was present on one occasion when the brickwork on No. 7 was started, and I observed the attitude, I will say, of Captain

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Feltham at that time, and watched the brickwork under construction.

Q. 14. Will you tell the Court just what occurred on that occasion, to your knowledge?

A. I was, naturally, interested in seeing just how the work was going, and I came over and stood here where the bricklayers were working. Captain Feltham seemed to be exceedingly angry at what was going on, and he asked one or two of the bricklayers where in the hall they learned to lay brick, and what they knew about bricklaying, and then finally got disgusted and kicked over some of the work that these men were trying to do.

Q. 15. Who kicked it over?

A. Captain Feltham, with his foot, and walked on away, and I walked off, because I didn't want to get into an argument.

703 Q. 16. Did you have occasion to observe the character of the brickwork about which he was complaining?

A. At that time, which has been quite a long time ago, and the exact course of brick they were laying at that time I don't remember. As I recall, it was possibly four or five courses above the slab, where the building course started, the stone course, and then there was some of the brick on top of that, and they were possibly two feet high off of the slab. They were working on the slab, at that time, the first floor slab, what I would call the first floor. If you call the other the basement, that was the first floor.

Q. 17. Did you have occasion to observe the grade of workmanship about which he was complaining, the character of it?

A. To answer your question, Mr. Kilpatrick, the nature of this brick work that they were doing was Flemish bond job. As I understood, they were trying to get what I had considered an impossibility with the type of brick they were using, and they were trying to get a perfect plumb header on the Flemish; that is, on the header that was shown, and at that time they were trying to plumb these joints over one another. With the type of brick they were using, I would consider that a physical impossibility.

704 Q. 18. Was that brick that you were making?

A. No; that was the brick that was sold by the Salem Brick Company. I am not criticizing their brick, but that is the nature of that type of brick.

Q. 19. Why is that impossible?

A. Well, the brick varies as to length and thickness a good deal, due to the nature of its manufacture, and it is pretty hard to hold a plumb header on it with your Flemish.

By the COMMISSIONER:

Q. 20. It would vary how much, would you say?

A. Well, the length of that type of brick will run from, I would say, $7\frac{3}{4}$ to $8\frac{1}{4}$ in length; and the header—it varied sufficiently to get a plumb joint is impossible.

Q. 21. You would have a variation in length of as much as one-half an inch?

A. Yes, sir; it varied as much as one-half an inch.

By Mr. KILPATRICK:

Q. 22. Were there any other instances, in the course of your visits to the job, where you observed either of the Government inspectors abusing workmen, or anything of that nature?

705 A. Mr. Kilpatrick, I was only present at this particular time. I happen to be in an industry where we are; naturally, friendly with the trade; that is about all I know of my own knowledge.

Q. 23. Please don't quote anything that anybody else has told you.

A. I can't say that I was present, because I did not stay on the job and talk to those people as much possibly as others did.

Q. 24. Did you have any troubles with the inspectors concerning the materials furnished by yourself?

A. We had rejections of tile, smooth tile, on the laundry—I am not quite positive whether it was the laundry or the garage. Those buildings were built about the same time, and I think the garage was tile, instead of the laundry.

Q. 25. Now, the building you have referred to, you said, was either the laundry, or what?

A. I don't think it was the laundry. As I recall, the laundry was solid brick, but I think it was one of the garages down at the utility building which called for smooth tile, and we

706 shipped up there, at that time, what we considered was a good grade of load-bearing back-up tile. The tile was rejected because, in its manufacture; when the tile comes off of the belt, the man, in picking it up, has to have it in his fingers, and in handling it, some of the oil had soaked up in the tile from the man's fingers, and if you held it up in the sunlight, you could see the imprint of the fingers. It wasn't indented, but it was dark, caused by the removal of the oil, and it was rejected.

Q. 26. What did you do about that rejected tile?

A. We took the tile back as we were instructed to do, and hauled it back, and went over it very carefully and looked it over, both myself and the loading foreman, and we, conscientiously, couldn't see a thing in the world wrong with it. We later sent it back to the job and it was accepted.

By the COMMISSIONER:

Q. 27. The same tile?

A. Yes, sir; the same tile.

Q. 28. Had you done anything to it in the meantime?

A. We hadn't done a thing in the world to it.

Q. 29. How large a quantity of tile was that, approximately?

A. I think we haul 1,000 pieces to the load, as I recall it; to the truckload.

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By Mr. KILPATRICK:

Q. 30. Did you observe any other—were you present on the occasion of any other differences between the contractor and the inspectors, about the laying of any of your tile products?

A. The only other instance was in a residential building, where they had a tile partition in the basement. This partition in the basement called for 12 x 12 x 12 tile, smoothed two sides, and as I understood it, Captain Feltham was demanding that that wall be faced on both sides perfectly. Well, we realized that, with the class of material available, of the class of material which we could secure, it was physically impossible to secure it, and Mr. Andrew—I believe it was Mr. Andrew—asked for a modification of the specifications. I went out with the two units that we were asking to be accepted in lieu of the others, 4 x 5 x 12 load-bearing, smooth one side, and 5 x 8 x 12, load-bearing, smooth one side. Mr. Andrew talked to Captain Feltham and showed him exactly how he proposed to use it.

By the COMMISSIONER:

Q. 31. That was in your presence?

A. I was standing there at the time. I don't know how close I was, but I was asked to come out there and bring this
708 tile, which I did. I wasn't present, however, when it was accepted, but I was advised it was satisfactory and to deliver it, which we did. Several days, possibly weeks, had passed, and I was advised—

Q. 32. By whom?

A. I was advised by the contractor that the wall as built was rejected and had to be torn down, and I went and looked at the wall, and according to my interpretation, it was built exactly as I understood the arrangement had been made between Mr. Andrew and Captain Feltham.

Q. 33. Was this arrangement made in your presence?

A. I was standing there and heard the conversation. I was advised that the reason the wall was rejected was not the material, but the manner in which it was laid.

By Mr. KILPATRICK:

Q. 34. Who advised you that?

A. Andrew advised me of that, that it had been rejected because of the way in which it was laid, not the material that had been rejected, so naturally I didn't have anything to do with it, so I didn't say anything about it. I just stood by until later on.

Q. 35. You were familiar with the way the tile was laid?

709 A. I was familiar with the way the tile was laid, and, of course, familiar with what had been agreed to.

Q. 36. What is your opinion as to the propriety of the way it was laid?

A. The controversy was over the method of laying. Captain Feltham had accepted what is commonly called load-bearing tile—

Q. 37. Load-bearing tile?

A. Yes, sir; load-bearing tile, in which all the cells of that particular type tile are laid horizontally. Now, the tile that this replaced was 12 x 12 x 12 load-bearing, but that particular type of tile is laid vertically. In other words, when you accept the material, you accept naturally the change in the way the cells were laid, and as I understood, it had been rejected because the cells had not been laid vertical. Well, to lay 4 x 5 x 12 tile with the cells vertical is like trying to stack up soap bubbles; it is impossible to do, in order to get a job, because the unit is not made to lay that way.

Q. 38. Then, in your opinion, as I understand your testimony, the way that he insisted the tile should be laid would have been improper construction?

A. Not improper, but the tile was not made to work in that method; it was made to carry a load, laid flat.

710 Q. 39. Mr. Hobbie, in your experience as a contractor and in the furnishing of brick to construction people, are you familiar with the customarily approved method for the owner's representative to inspect the construction of the work as it is going on?

A. My previous experience on construction work has been, that the inspector on the job was constantly on the job to interpret the specifications, and to answer any questions as to that particular time. In other words, if the work was in progress, and you wanted an interpretation, you were to get it immediately as at the time the work progressed.

By the COMMISSIONER:

Q. 40. You are speaking now of inspections on Government jobs?

A. I am talking about inspections on not necessarily Government jobs. I understood Mr. Kilpatrick did not say Government jobs.

By Mr. KILPATRICK:

Q. 41. No; I was referring to construction work in general. Is there any different rule prevailing on Government jobs?

A. Not that I know of. I don't know of any.

By the COMMISSIONER:

Q. 42. You have had experience with Government jobs, have you?

711 A. Yes; but the time is a long time past, and I am not quite positive that I can answer the question. You mean have I been on jobs, when I have been in constant touch with the inspection, on Government work, as superintendent?

Q. 43. Yes.

A. I don't think so, but I can state this, to qualify that, that we sell a lot of brick to Government jobs and we are in constant touch with the inspectors on those jobs.

Q. 44. Then your experience would cover both classes of work?

A. I would say that my experience on Government jobs, as far as inspection is concerned, that we were able to get a decision on anything that we asked for immediately.

Q. 45. Was that true of this Roanoke job?

A. I really don't know. I don't know how that was handled.

Q. 46. You had nothing to do with the construction end of it; you were merely a material man?

A. Yes; and I can't answer that question.

By Mr. KILPATRICK:

712 Q. 48. You are familiar with the customary method of laying bricks, are you?

A. Yes, sir.

Q. 49. In your experience, aside from this Roanoke job, have you ever known of an instance where an inspector, on either a Government or private job, had required of the contractor that he build outside scaffolds from which his bricklayers must work.

A. That is a matter, I would think, unless the specifications specifically call for it, would be entirely within—entirely up to the contractor, in order for him to handle the work so as to give the job that he is called on to give, entirely up to him. Outside scaffolds are never used, unless you have got an awfully high building, when the scaffolds, as a rule, are swung on patent scaffolds from the building, the frame of which has been erected, and that is done mostly on account of the height.

Q. 50. Were you familiar with the scaffolding methods used on this job we are talking about?

A. I know that, when the job was first started, the bricklayers were laying brick from the inside, and in the latter buildings they laid most of them from the outside. That was observation. I didn't know why it was done, but I just observed that.

Q. 51. Have you ever seen those outside scaffolds used on 713 buildings as low as these were on the Roanoke job?

A. I would say it is the common practice that the scaffolds be inside, Mr. Kilpatrick, of the brick work, especially when the buildings are being faced, when the bricklayers can lay the face brick over the wall a lot better than he can by leaning with his body against the wall. He can make better time and do a better job, because he can look down the wall from the inside and see so much better than he can by standing up against the wall.

Q. 52. Does that opinion apply to the type of brick work that was done on this job?

A. I would say, on this particular job, that the contractor could give a better job, on account of the type of bond used, because—

Q. 53. A better job by doing which?

A. By working from the inside, because you have to keep, as I understand it, a plumb header, and you can plumb down by looking down the wall far better than you can stand up against it and look down it in working on the outside.

Q. 54. Now, speaking of the plumb header, how much variation in the vertical line, the mortar line between the bricks, when this type of bond that was being used there, is customarily allowed?

A. The particular brick that was used out there would vary a great deal more, due to the type of manufacture, than other types of brick.

714 Q. 55. Confine your answer to the type of brick that was being used here.

A. I was going to illustrate that by saying this: Therefore, you would naturally accept, in this particular brick, a wider variation in your joint than you would commonly accept in other types of brick.

Q. 56. How much variation do you think would be permissible?

A. How big were the joints supposed to be? I don't know how large the joints were supposed to be. Was there any particular size joint called for?

Q. 57. Assuming that a one-half inch joint was called for.

A. I would say you would have to have as much as one-fourth of an inch variation in it, at least one-fourth of an inch.

Q. 58. Would you consider a rejection for a variation of one-eighth of an inch to be improper?

A. Improper and unreasonable.

Q. 59. In this particular bond that was being used there, which I believe was Flemish bond—is that right?

A. Yes, sir.

Q. 60. And working with the type of brick they had to use there, would you consider it to be the proper procedure to require the contractor to lay out on paper, in advance, the brick
715 courses before the brick was laid?

A. I have never had that done, Mr. Kilpatrick. Commonly, on a job like that, when they started, the bricklayer takes a dry brick and lays his bonds out on the foundation, takes into consideration the short and long bricks over the foundation as he starts up, and maintains that particular type of bond to suit the conditions of the length and breadth of the bricks. That is the common practice.

Q. 61. Would it be as practicable to lay it out on paper, as to follow the method you have outlined here?

A. It would be perfectly practicable, if all of the brick were the same size.

Q. 62. I mean with this type of brick.

A. No; I wouldn't think so. I don't say it couldn't be done, but I don't think it would be practicable.

Q. 63. Are you familiar with the specifications for face brick on this particular job?

A. I was familiar at the time they were written, but that has been three years ago and I wouldn't say that I could remember them now.

Q. 64. In answering the next question, I will ask you to assume that the specifications contain this provision: "The exterior brick work shall be laid out with uniformity regarding openings and
716 breaks in walls, so that the bricks and joints on each side of the center line of each opening, etc., shall be similar."

Under that specification, in your opinion, would it be proper to require absolute uniformity of the header and stretcher brick on each side of the center line of the building?

A. My interpretation of this would be a symmetrical layout of the bond between the openings of one elevation. It wouldn't apply to the different elevations being symmetrical.

Q. 65. I hand you a copy of Plaintiffs' Exhibit 32, which has been introduced in this case as a photograph of Building No. 2. Under the specifications that you have just read, would you consider it proper to require that, if the header came under the center of the outside window of the right wing on the third floor, that the header must also appear under the corresponding center of the corresponding window on the opposite wing?

Q. 66. Yes.

A. No; absolutely no.

Q. 67. In your opinion, would the requirement that that sort of uniformity be observed as between the windows in the opposite wings add materially to the expense of the job?

717 A. I think it would add a great deal, a tremendous amount.

Q. 68. In your experience as a builder, or in your general experience, have you ever known an inspector on a construction job to require two hours' advance notice of the work being ready for inspection?

A. In my experience, I never heard of it before.

Q. 69. Would you consider that a reasonable requirement?

A. I think it would tend to delay the progress of the work a great deal. If you were ready to go ahead and had to give two hours' notice before the inspector could look the work over, I think that would tend to delay the work and make the costs run up.

Q. 70. What is the custom as to advance notice for inspections, if any, in this kind of work, if you know?

A. Speaking from my experience on jobs, when we asked for inspections during the progress of the work, the procedure was to go to the man and ask him to come up and look it over and approve it. Final inspections, of course, are prearranged, because of the nature of the inspection and the general correspondence ensues for it. But for an inspection during the progress of the work, there is generally a verbal arrangement between the superintendent and the inspector on the job, and no prior notice. That is my experience.

718 Cross-examination by Mr. WATSON:

X Q. 92. Mr. Hobbie, you testified that the best method of laying that brick was to build a scaffold on the inside. Is it possible for a bricklayer to build that wall up to the top of the bottom of the spandrel beam from the inside?

A. The common method of building brick work, when you have spandrel beams at your floor level, is to carry your brick work up as high as the brick mason can reach it from the inside, to complete the inside masonry with your backing up material on the inside, and when you got to the next floor level, he reaches down and brings his outside on up. There is no place, at all, where he would actually have to have that scaffolding on the outside, except where he couldn't reach around the corner, and that might be done in some cases, depending entirely on the length of the beam at the corner as to the necessity for it.

X Q. 93. Have you ever laid brick yourself?

A. I am not a mechanic, but I have had experience with brick.

719

Redirect examination by Mr. KILPATRICK:

R. D. Q. 94. Mr. Hobbie, in those instances you mentioned, when, on account of the thickness of the beam, it wouldn't be practicable to lay from the inside, how is that situation met when you are not building an outside scaffold from the ground up?

A. You mean at the corner?

R. D. Q. 95. Yes.

A. As a rule, just a stub scaffold is built out to carry you around that corner.

R. D. Q. 96. Is that an expensive proposition?

A. No, that is very cheap.

R. D. Q. 97. When you reach the cornice, when you have a wooden cornice and you have been working from the inside, is it necessary then to build a similar scaffold to work from?

A. You mean the height of the whole wall?

R. D. Q. 98. Yes.

A. That would depend on the type of the cornice. If the type of cornice called for wooden blocks to build your cornice into, you could possibly carry your brickwork all the way through without building a scaffold. I think, on this particular job, it wasn't essential to carry it all the way through.

720

E. F. PERKINS, a witness produced on behalf of the plaintiffs, testified as follows:

Q. 1. State your full name for the record.

A. E. F. Perkins.

Q. 3. And your present age?

A. I am 55.

Q. 4. And your occupation or profession?

A. I have been engaged in the building business all of my life.

Q. 5. Are you connected, in any way, with Mr. Algernon Blair or with the Roanoke Marble & Granite Company?

A. No, sir; not at the present time.

Q. 6. Have you been connected with them at any time?

A. I worked for Mr. Algernon Blair on the Veterans' Facility job.

Direct examination by Mr. KILPATRICK:

Q. 7. How long did you say you have been engaged in the construction business, Mr. Perkins?

A. Since I was a boy 18 years old.

Q. 8. Have you worked on many Government construction jobs, Federal Government construction jobs?

A. Only one.

Q. 9. And that was where?

721-723

A. Is Navy work in that class?

Q. 10. Yes.

A. I worked on two jobs; one was for the Bureau of Yards and Docks, and the other was the Veterans' Facility.

Q. 11. How long have you worked for Mr. Blair?

A. Some five or six months.

Q. 12. About when did you start?

A. I went to work about the 1st of February, somewhere around there.

Q. 13. What year?

A. That was when we were in the depths of despair.

Q. 14. Was that at the outset of the Roanoke job?

A. Yes, sir.

Q. 15. And you worked for him how long?

A. Up until about June or July, I believe.

Q. 16. How did you become separated from his service; that is, were you discharged or did you resign?

A. I resigned.

Q. 17. In your work there, what contact, if any, did you have with Captain Feltham, the Government supervising engineer?

A. What contact?

Q. 18. Yes; did you have contact with him?

A. Yes, sir; he was on the job every day.

Q. 19. Did he cooperate with you in your work?

A. In some instances, he did.

Q. 20. Were there any instances in which he failed to cooperate with you in your work?

A. Specific instances?

Q. 21. Yes.

A. Only one that I remember at the present time.

Q. 22. Tell us about that.

A. We had been required to dig up some concrete footings under columns that had the steel placed wrong, and there were just four small ones probably $3\frac{1}{2}$ or 4 feet square, a foot and a half thick, and by the time we were ready to pour those other forms along that floor, which was supported where these footings had been formed—we were ready to pour these footings, so we could proceed with the rest of the work, and I asked Captain Feltham—in other words, he came along and asked me—if you want me to quote his exact language?

Q. 23. Yes.

724 A. What in the hell I was fixing to do, and I told him

I could do any one of three things and I would like to tell him about it and I would do whichever way he wanted. He said, "I am not here to tell you how to do your work, but I am here to

tell you when it is done right," and he wouldn't tell which to do. He wouldn't even let me tell him anything, and started walking off. I followed him and finally succeeded in stopping him and asked him to please hear my statement, and I laid my three plans for pouring those footings before him, and he gave me the same answer and walked off, and then stopped and told me to tear the God damn thing out of there.

Q. 24. To tear it out?

A. Yes, sir.

Q. 25. Well, did you tear it out?

A. No, sir.

Q. 26. Then, what happened?

A. Mr. Dodd—Captain Feltham, for some reason, wasn't on the job the next day, and Mr. Dodd told me it wasn't necessary to tear it out.

Q. 27. Was there any requirement on the work on this job for anchoring the brick walls to the concrete with wire?

A. Yes, sir.

Q. 28. Did you have any difficulty about the inspections on that work?

725 A. About—

Q. 29. About the removal of the forms on that work?

A. The only argument that I ever knew about in regard to those wire anchors—that is when we had the concrete walls with 4-inch face brick—was the method of putting the wires into the forms, so they would be anchored into the concrete.

Q. 30. Will you explain that, please?

A. Well, we were required, if I remember correctly, to put the wires in every course of brick, on 3-foot centers, horizontally, and we would bore a small hole in the form and stick the wire, maybe 16 inches long, and bend it around, and stick both ends through the hole from the inside, letting the two ends stick out, and that made a loop in the wire in the concrete.

Q. 31. Was this before the concrete was poured?

A. Yes, sir; in the form. The reason for doing it that way was so the forms would pull off.

Q. 32. Those forms were made of what?

A. Wood. Captain Feltham ordered me to pull those wires out and do it around the other way, and it was held up for some two or three days, I don't remember how long, but finally we went ahead like we were doing, with the loop on the inside.

Q. 33. What would have resulted, if he had stuck to his preliminary ruling on that?

726 A. Well, you would have had to split your forms up with a chisel, or something, to get them off.

Q. 34. Were these forms supposed to be used elsewhere, when they were removed?

A. I suppose so. They generally are. We use the lumber until we wear it out. It would be rather expensive to have to buy new lumber for every form.

Q. 35. In your experience, Mr. Perkins, what is the general custom observed by inspectors with regard to advance notice for inspection of the work, during the course of the work?

A. You mean generally?

Q. 36. Yes, sir; I am not speaking now of the Roanoke job.

A. I have never had, in my life, but one job that the inspector wasn't constantly on the job, cooperating and trying to get the job done in the best possible manner, and I never had to notify the man in my life that I was ready for an inspection.

Q. 37. What was the one exception?

A. The Veterans' Facility job.

727 Q. 38. What was the attitude of the inspecting force there?

A. The attitude of the inspecting force there was to show them respect and honor their positions.

Q. 39. I am not speaking of your attitude; I am speaking of the attitude of the inspectors.

A. That is what I am speaking of. They seemed to want to have proper respect and admiration from everybody on the job, and wanted to make everybody feel like they were the supreme bosses, and nobody else had any sense but them; that is, with Captain Feltham. Mr. Dodd wasn't that way with me.

Q. 43. Go ahead with your answer to the other question. I interrupted you to ask you what you were doing.

A. What was the question?

The COMMISSIONER. Read the question.

(Thereupon, the reporter read the pending question.)

The WITNESS. It was detrimental, the attitude was detrimental to the men, and to me, because I am of a nervous disposition and I can't stand criticism. I can't stand anything that makes things run with friction; I want things to run smoothly, and when I am nervous I can't think, and that causes me more trouble than anything else.

By Mr. KILPATRICK:

Q. 44. What caused you to be nervous on this job?

A. The general atmosphere of the inspection—not the inspection, but the inspectors.

Q. 45. What inspectors do you refer to?

A. Captain Feltham, principally.

728 Q. 46. You say that you resigned from Mr. Blair's organization in the summer of 1934; that is, during the course of this job?

A. I resigned in the summer time; yes, sir.

Q. 47. Did you have any conversation with Captain Feltham, concerning your leaving the job?

A. Nothing more than he just come along on the job where I was, and told me he had heard I was leaving, and he said he didn't blame me for leaving.

Q. 48. Was that all he said to you on that occasion?

A. Well, he said he didn't blame me for leaving; it was a crummy outfit. I don't know just the words he used, but he didn't blame me for leaving the outfit, it was such a crummy outfit, or words to that effect.

Q. 49. To what outfit was he referring, if you know?

A. To the general contractor's outfit, I presume. I don't know what else it could have been.

Cross-examination by Mr. WATSON:

X Q. 52. You are a contractor by profession?

A. No; I am just in supervisory work.

X Q. 53. Did you work in connection with Mr. C. W. Roberts on the job?

A. I worked under him.

729 X Q. 54. Worked under him? He was the general superintendent for the Blair outfit?

A. Yes, that is the way I understood it.

X Q. 55. Now, Mr. Perkins, you testified, on direct examination, that it was necessary for Captain Feltham to cooperate with you on that job. Tell us what you mean by cooperating.

A. I have always been in the habit and still am in the habit, and hope to the Lord I can stay that way, of going to my inspector and discussing all my problems and my ways and means of doing things, and avoiding all of these arguments that come up after the work is done. That is the way I like to work. In other words, the inspector manages the job and I follow through.

730 X Q. 56. Didn't you have opportunity to discuss the work with Captain Feltham?

A. Yes, I had that opportunity and started out that way, with the full intention of doing that same thing.

X Q. 57. Why was the change of attitude; what caused the change of attitude?

A. The reason that I changed my attitude in reference to those same four footings that I mentioned before. Now, he didn't know

that that steel was off in those footings. I showed it to him. That was in a spirit of cooperation, and when he looked at it—he and Mr. Dodd were together—he said, “Well, we will let this go, we will let it pass, but,” he said, “we don’t want it to happen any more.”

X Q. 58. That is, Mr. Dodd said that, not Captain Feltham?

A. I can’t say what one of the two said it, but they were both together.

X Q. 59. Anyway, it wasn’t necessary to tear out these footings?

A. It was necessary. We had to tear them out.

731 X Q. 60. You did tear them out?

A. Yes, sir. Now, let me finish my story and I will show you why I quit trying to get any cooperation. He said, “That will be all right. We will let this go by, but I don’t want it to happen any more,” and I thanked him and laughed, and I said, “I will be sure and guarantee you it won’t happen any more, because we haven’t any more footings to pour,” and the next morning I went to the office and told the sub-general superintendent what had happened. The next morning, the first thing

732 that I find is to have the information thrown in my face that a letter had come through from the inspector—I don’t know which one—saying that those footings would have to be torn out, which made me out a liar to the general superintendent, because I had told him they had said that the footings could remain in; and I went to Captain Feltham’s office and talked with him, personally, about it. I couldn’t understand why he would tell me it would be all right, and then reverse himself so completely; and he was very gruff and, if you will pardon the expression, ungentlemanly, in his discussion of the thing. He made no offer, whatsoever, to protect my integrity; and I feel that, when a man wants to be four square, if he wants to reverse himself, he should say so, and he should have said in his letter that he had notified me they were all right, and protect me. These were strangers, all of these men were strangers to me; and I can’t put confidence and trust in men that will do me that way and, consequently, I didn’t go back to his office any more.

X Q. 61. Please answer the question: Were you required to tear out these footings?

A. Yes, sir.

X Q. 62. Now, I want your opinion. In your opinion, do you think Captain Feltham was a good inspector on that job?

A. I think Captain Feltham knows building and buildings.

X Q. 63. I mean on this specific job, the Roanoke Facility.

A. I don’t think he went about it in the right way to get good cooperation.

733. X Q. 64. Is this the first job you worked on for the Blair organization?

A. Yes; and the only one.

X Q. 65. You haven't worked on any since then?

A. No, sir.

X Q. 66. You haven't—have you worked on any other Government job, on your own account?

A. I had general supervision of some barracks built in the Naval Base at Norfolk.

X Q. 67. Was Captain Feltham on that job?

A. They were neither there. There was a young fellow there that told me—no; Mr. Dodd told me that he trained the young inspector that was there.

X Q. 68. How did you get along with the Dodd trained inspector?

A. I never met a finer gentleman in my life anywhere.

X Q. 69. Now, Mr. Perkins, you testified you were a nervous man, and that Captain Feltham made you nervous on this job. Have you always suffered from nervousness?

A. That is the only job I ever had that I ever had any trouble, at all.

734. X Q. 70. Why did you resign your job?

A. I was told, by good authority, that Captain Feltham had made the statement that he was watching me as closely as he could, and the very first time he got anything on me he was going to run me off of the hill. You know, I couldn't work under that.

X Q. 71. Now, do you believe that Captain Feltham did run you off of the hill?

A. That was the reason I left.

X Q. 72. Who told you that?

A. Mr. Neal Andrew.

By the COMMISSIONER:

X Q. 73. He was connected with Mr. Blair?

A. He was connected with Mr. Blair; yes, sir.

By Mr. WATSON:

X Q. 74. What was his job with Blair?

A. His job, as I understood it, was principally to go to and from Roanoke to Washington, to try to keep things working. I don't know what job he had.

X Q. 75. In other words, he was a fixer?

A. I thought he was the official nutcracker.

X Q. 76. Now, Mr. Perkins, as a matter of fact, you couldn't hold on to the job down there on account of your nervous condition; isn't that right?

A. How is that?

735 X Q. 77. You couldn't hold on to your job down there, because of your nervous condition?

A. No; not at all.

X Q. 78. Do you suffer with neurosis?

A. What?

X Q. 79. Nervousness?

A. I told you I never had such an experience in my life, before nor since.

736 Redirect examination by Mr. KILPATRICK:

R. D. Q. 80. Mr. Perkins, did Mr. Andrew, or anybody else from the Blair organization, indicate to you that they wanted you to leave that job?

A. No, sir; I got this information of Captain Feltham's attitude one evening, and the next morning I told Mr. Roberts t. I thought I had better leave the job, and my reason for leaving, and he said, "No, we don't want you to leave." He said, "You are the first man on the job, and you are a local man, and we want you to go through with it."

R. D. Q. 81. What did you do when you left this job?

A. I went to the V. P. I. for J. F. Barbour & Company.

R. D. Q. 82. And went immediately to work?

A. I left the Veterans' Facility on Saturday afternoon, I believe, and I went to V. P. I. and assumed my duties Monday morning.

737 Re-cross-examination by Mr. WATSON:

R. X. Q. 83. Just a minute, Mr. Perkins. Did Captain Feltham inspect all of your work?

A. No, sir.

R. X. Q. 84. Who else inspected it?

A. Mr. Dodd.

T. E. DEVINNEY, a witness produced on behalf of the plaintiffs, testified as follows:

By the COMMISSIONER:

Q. 1. State your name for the record, please.

A. T. E. Devinney.

Q. 2. And your address?

A. My present address is 625 Sixth Avenue, Huntington, West Virginia.

738-739 Q. 3. And your present age?

A. I am 43.

Q. 4. And your occupation or profession?

A. Building superintendent.

Q. 5. Employed by whom?

A. Algernon Blair.

Q. 6. How long have you been so employed?

A. I have been so employed eighteen years.

Direct examination by Mr. KILPATRICK:

Q. 7. Did you have any connection with this Veterans' Hospital job at Roanoke in 1934 and 1935?

A. Yes, sir.

Q. 8. What was your connection with that job?

A. I was office manager.

Q. 9. Have you done any other type of work for Mr. Blair, except that?

A. I supervised construction for him.

Q. 10. What construction jobs have you supervised?

A. The foundation for the Miami, Florida, Post Office; the Post Office at Perry, Florida; an office building for the West Virginia Electric Company, Huntington; and also an office building for the Huntington Federal Loan and Savings Association, in Huntington.

Q. 11. Are you in Mr. Blair's employ at the present time?

A. Yes, sir.

740 Q. 12. What is the nature of your present work?

A. Supervising the construction of these buildings I just mentioned.

Q. 13. At Roanoke, I believe you testified that you were the office manager at the job?

A. Yes, sir; the field office manager.

By the COMMISSIONER:

Q. 14. Were you there throughout the job?

A. Yes, sir; I was.

By Mr. KILPATRICK:

Q. 20. When did it become necessary to furnish temporary heat in the buildings at Roanoke?

A. About the first week in November.

Q. 21. Then, if you had completed the job by the 1st of November, would it, or not, have been necessary to furnish any temporary heat?

A. It would not have been necessary.

Q. 22. Were you instructed by Mr. Blair, or the Blair organization, from the outset of this job, as to the date on which it was planned to complete it?

A. Yes; I was familiar with the anticipation date.

Q. 23. What was that date?

741 A. November 1, 1934.

Q. 24. What, in your opinion, prevented your completing it by that date?

A. Primarily, the failure of the mechanical contractor and the adverse attitude of the inspectors.

Q. 25. Were you familiar with the requirement of Government inspectors, on Government jobs, with reference to the building of outside scaffolds for bricklaying?

A. Yes, sir.

Q. 26. In your opinion, was that requirement necessary, in order to produce work conforming with the specifications?

A. No, sir; it wasn't necessary.

Q. 27. In your opinion, could the work have been done better from the inside than working from an outside scaffold?

A. Yes, sir.

Q. 28. Why do you say that?

A. Because, as has been pointed out, the nature of the brick and the character of the brick which was selected by the Government, and a man can easily keep the joints plumb by looking down them easier than he can by looking up, or having to lean against the walls and try to plumb those joints.

By the COMMISSIONER:

Q. 29. Could he look down, if the scaffold was on the outside?

742 A. No, sir; he could look down a short distance below.

But if he had an inside scaffold, it was usually about 3 feet 6 inches or 4 feet, where a man can easily work.

Q. 30. So the scaffold would interfere with his view from the outside?

A. Yes, sir.

By Mr. KILPATRICK:

Q. 31. You heard Mr. Hobbie's testimony about the customarily permitted variation in the vertical line of the mortar and brick of this type?

A. Yes, sir.

Q. 32. Do you agree or disagree with his opinion on that subject?

A. I agree with it.

Q. 33. You heard his testimony concerning the requirement for uniformity as between the brick work under the windows in corresponding wings of the buildings?

A. I concur in his testimony in that.

Q. 34. Were you familiar with the ruling which was made with reference to apprentices or semiskilled carpenters?

A. Yes, sir.

Q. 35. What was that ruling?

A. That ruling was, in effect, that we could have no apprentices or helpers with the carpenters; that all of the carpenter work had to be done by skilled mechanics.

743

By the COMMISSIONER:

Q. 36. How did that ruling come to you, that is, the information in regard to it?

A. My information—I just don't know who told me. In all probabilities, Mr. Roberts advised me of this ruling, after he had been so advised by the Government inspecting force.

By Mr. KILPATRICK:

Q. 37. But you didn't get such ruling from either Captain Feltham or Mr. Dodd, or any other Government inspector?

A. Directly? I do not recall that I did.

Q. 38. Were you in charge of the correspondence at the job, on the behalf of Mr. Blair?

A. Yes, sir; generally, I was.

Q. 39. Had you ever worked on a job before, where the intermediate grades of labor between common labor and skilled mechanics was not recognized?

A. Not recognized?

Q. 40. Yes.

A. No, sir; I never have.

Q. 41. Are you familiar with the rodmen who placed and tied the reenforcing steel?

A. Yes, sir.

Q. 42. What is the customary classification of those workers in the trade?

744 A. Semiskilled classification.

Q. 43. I hand you Plaintiffs' Exhibit No. 99, and ask you if you know what work those men were doing on the job, the men named in that exhibit?

A. They were doing rodmen's work, tying the reenforcing steel.

Q. 44. Have you ever been on a construction job where the men doing that type of work were classified as skilled mechanics?

A. No, sir.

Q. 45. I hand you Plaintiffs' Exhibit No. 91-A and Exhibit No. 91-B, and ask you to look at the second page there, Are you familiar with that schedule on Exhibit 91-B?

A. Yes, sir.

Q. 46. Was that schedule posted at the job, or not?

A. To the best of my recollection it was; yes, sir.

Q. 47. Do you know, of your own knowledge, whether Captain Feltham or Mr. Dodd ever approved that list?

A. At the beginning of the work, early in January, it was my understanding that Captain Feltham did approve this list.

Q. 48. Did he tell you so; do you recall?

A. I think he told Mr. Roberts and myself that before he moved out, while he had an office in the Federal Building here.

745 Q. 49. Did he later change that approval, or withdraw it?

A. Yes, sir; later, he changed this, as well as I recall, some time during the month of March.

Q. 50. In what respect?

A. Demanding that we pay the men who had done reenforcing rod work the difference between 60 cents an hour and \$1.10.

Q. 51. I hand you some documents fastened together with a clip, consisting of ten sheets, and ask you if you can identify them?

A. Yes, I am familiar with this correspondence. Do you want me to go on?

Q. 52. State, in general, what it is, without giving names and dates. Does it all relate to the same subject matter?

A. Yes, sir.

Q. 53. What is that subject matter?

A. It relates to—that we were required by the inspectors to install temperature steel in the concrete slab on building 15, in which two-way steel had already been shown.

Q. 54. Are those copies of letters written by the Blair organization?

A. Yes, sir.

746 Q. 55. And were the original letters received by the Blair organization from the persons indicated thereon?

A. Yes, sir.

Mr. KILPATRICK. We offer those in evidence.

The COMMISSIONER. The exhibit will be received and marked "Plaintiffs' Exhibit 101," the exhibit consisting of ten sheets, with the understanding that Government counsel will be afforded the opportunity to make a comparison of the copies with the originals.

By Mr. KILPATRICK:

Q. 56. Mr. Devinney, I call your attention to the second sheet of Exhibit No. 101, being a copy of a letter dated April 21, 1934, to Construction Service, Veterans' Administration, through Captain Feltham, signed in Mr. Blair's name by yourself. You sent that letter?

A. Yes, sir.

747 Q. 61. Will you please explain just what is meant by temperature steel?

A. Temperature steel is used, ordinarily, to prevent expansion and contraction in the opposite direction, when the steel is placed. In this particular slab we had—the plans called for what we term two-way steel, the structural bars running both ways, and there was no need of having temperature steel in that slab, because of the bars running in both directions would take care of any expansion and contraction in the concrete.

748. Q. 62. Then in some of the concrete, as I understand it, you were required to place reinforcing steel running in a row, one direction?

A. Well, yes; that is what—well, we had to install temperature steel where that was the case.

Q. 63. The temperature steel, in that case, would run at right angles to the reinforcing steel?

A. That is correct.

Q. 64. Then in this particular slab, that this correspondence deals with, under the specifications—I am leading the witness, Your Honor, because I think the correspondence shows it—the reinforcing steel ran in both directions?

A. Yes; that is correct.

749 Q. 65. And there was no necessity, then, as I understand your testimony, for temperature steel?

A. No, sir.

Q. 66. That ruling was made, at the outset, on that question of temperature steel in the two-way reinforcing slab?

A. At the outset?

Q. 67. Yes.

A. We were required to install this temperature steel.

Q. 68. Who required you to do that?

A. I think it was required by either Captain Feltham or the Washington office of the Veterans' Administration. Captain Feltham required it—that was it—and then we put in this extra steel that we had required—it wasn't required of us, and he was upheld, and the proposal for this extra was declined by Washington.

750 Q. 69. Were you required to put temperature steel in all two-way reinforced slabs?

A. No, sir; not after that.

Q. 70. Did Captain Feltham withdraw his requirement in the case of two-way construction after that?

A. Yes, sir, he did.

Q. 71. Do you know whether he withdrew it as a result of any ruling from Washington, or what the occasion was?

A. I assume that he did, because Washington ruled that we would not have to put in any additional temperature steel in the two-way slab.

751 By the COMMISSIONER:

Q. 72. How did that ruling come to you?

A. There is, in this correspondence, I think, a letter from Colonel Tripp. Yes; here is a letter to that effect.

752 Q. 73. Now, in your work on this Roanoke job, did you come in contact with Captain Feltham and Mr. Dodd?

A. Yes, sir; I did.

Q. 74. Could you tell us, in general, the attitude of these inspectors towards the work that you were carrying on?

A. Their attitude was very adverse, and they didn't indicate any spirit of cooperation with us from almost at the outset. We started there in January and, as they knew, we began accumulating equipment for our excavation work, which was quite an item, and near that time they would write letters to us and ask us why we weren't started; and I remember one instance when we had a letter from them to that effect, and the snow had covered the ground for a week, and it was almost impossible for the men to walk around there, let alone do any work; and just a series of circumstances, such as requiring two hours' notice for the inspection of steel, which isn't customary.

753 Q. 75. Did you ever know of it being required on any other job?

A. No, sir; I haven't.

Q. 76. Does that occasion any additional expense to the contractor?

A. Yes, sir; it causes additional expense and delay, and that attitude towards mixing the concrete was adverse, and we went to quite a good deal of expense and trouble to secure equipment and erect it, whereby we could expedite the placing of the concrete. After we had done this, we had better facilities for pouring the concrete. The system before would be what we termed "dry batch," which we hauled to the paver and mixed in this paver. We also had a mixing machine, where we could mix it right there. When we started pouring the concrete, they maintained, after giving approval of the system we had set up, that we could only use one of either of the plans or equipment. After
754-755 settling the controversy, which I imagine took at least 30 days to straighten out, we were finally permitted to use those methods.

Q. 77. Was it necessary to go over the heads of the inspectors to Washington, to get that permission?

A. Yes; it was, because I recall two or three trips to Washington for conferences about it. Another thing I might mention was their attitude towards the men, in going directly to the men, when common courtesy would have been to call in either the contractor, Mr. Roberts, or one of the supervisory forces, in their relation to the workmen.

Q. 78. Did that have any effect on the efficiency of your working forces?

A. I think that had a very bad effect on the men, as they were all under nervous tension and could not work efficiently, as under ordinary circumstances.

Cross-examination by Mr. WATSON:

X Q. 79. Mr. Devinney, didn't you testify in Montgomery?

A. No, sir.

X Q. 80. Your job was that you were the office manager and carried on all of the correspondence?

A. Practically all of it; yes, sir. All of it passed through my hands, anyway.

X Q. 81. Are you a brick mechanic?

A. Am I a brick mechanic? No, sir.

X Q. 82. Have you any trade?

A. No trade; no, sir.

X Q. 83. The extent of your experience has been the eighteen years with the Blair organization?

A. Yes, sir.

X Q. 84. Tell us, was this the largest job contracted by Blair?

A. Was this?

X Q. 85. Yes.

756 A. No, sir.

X Q. 86. What other job, larger than this job?

A. The Northport, Long Island, Veterans' Hospital was a larger operation.

X Q. 87. What was the amount of that contract?

A. Well, roughly, two and three-quarter million dollars. I don't recall the exact figure.

X Q. 88. Were you on that job?

A. Yes, sir.

X Q. 117. Did the specifications require the use of temperature steel in the buildings out there?

A. As I recall, they did not; no, sir. There was no necessity for using temperature steel where you have two-way reinforcing.

757-758 C. C. PHIPPS, a witness produced on behalf of the plaintiffs, testified as follows:

By the COMMISSIONER:

Q. 1. State your name for the record.

A. C. C. Phipps.

Q. 4. And your present age?

A. I am 31.

Q. 5. And your connection, if any, with Algernon Blair or the Roanoke Marble and Granite Company?

A. None, at the present time.

Q. 6. Were you connected with either one during the period when the Veterans' Facility was being built at Roanoke?

A. I was.

Q. 7. In what capacity?

A. Brick superintendent.

Q. 8. For Algernon Blair?

A. Yes, sir. I laid brick fifteen years.

Q. 14. What experience had you had before you went into this Blair organization?

A. I laid brick fifteen years.

Q. 15. Where?

A. I learned my trade in Philadelphia.

Q. 16. How old did you say you are now?

A. Thirty-one.

By Mr. BALL:

Q. 17. Is this your first work in Roanoke?

A. No, sir.

Q. 18. Where else did you work in Roanoke?

A. The first good job I did here was the American Theater.

Q. 19. In what capacity?

A. My father and I were in the subcontracting business at the time.

Q. 20. From your experience over fifteen years, can you say that you are familiar with the character of the brickwork that was necessary in performing the contract at the Roanoke Hospital?

A. Well, I was right confident of myself when I got the job.

759 Q. 33. When you got to laying the brick, the face brick, did you do it from an inside scaffold?

A. Started on the inside; yes.

Q. 34. Why did you not continue?

A. Well, I will put it this way: The bricklayers that I had working there, the majority of them, were real good mechanics,

but they hadn't worked any in so long that they had become rusty, and, naturally, they were all excited. We were trying to work as many men as we could, to give as many of these men work, and push the work as fast as we could, but the inspectors on the job—they just had me scared to death, had the men scared to death, and they couldn't work.

Q. 35. The inspectors being whom?

A. Principally Mr. Dodd. I suppose it is just their Army discipline, but nobody, the bricklayers that were veterans, themselves, could understand his attitude. I couldn't understand it. He had me scared to death half of the time.

Q. 36. What sort of language did he use?

A. For instance, the day Mr. Feltham kicked over the brick, Dodd came around there, and the bricklayer he was talking to was a veteran, too, and he said, "God damn it! If he can't do it right, get him away from here and put a man there that can." The men didn't know what he was going to do.

Q. 37. What effect did that have on you and the bricklayers, that is, as to your efficiency in carrying on this
760 job?

A. Naturally, when a man is afraid of his job, he can't do very much.

Q. 38. At first, you were laying brick from the inside scaffold?

A. No; we were laying it off of the slab.

Q. 39. Off of the ground, and after you came up to the place where you were to use the inside scaffold, did you use the inside scaffold?

A. We didn't use that inside scaffold after we started the building that had the face brick, backed up with tile.

Q. 40. Now, will you explain the authority given for laying the brick off of the outside scaffold?

A. Well, when we started on No. 7, the question was—in fact, the question arose down in the utility group, and I think that Mr. Dodd and I discussed it one morning, and he wanted to know how we were going to build it, and I told him that I had been accustomed to use what they call jacks. That is a square platform that projects out of the window, with a leg fitting on the window sill, and it is cantilever, and comes back in four or five feet on the inside, with another 4 x 4 to the ceiling, which is used almost one hundred percent on all of the work I worked on in Washington and Baltimore. It is a very economical type of scaffolding, and you keep your work cleaner, and that was the type of scaffolding—I wanted to use.

761 Q. 41. But you didn't use it on this job?

A. No, sir.

Q. 42. Now, get right on to the outside scaffolding and tell us about that.

A. Mr. Dodd said we couldn't keep the joints straight, and it didn't make a good looking job. He said, "Who the hell ever saw anybody build a wall without an outside scaffold, when he was using face brick?"

Q. 43. Did he order you to use an outside scaffold?

A. That was the orders I got from Mr. Roberts.

Q. 44. Did you get them from Mr. Dodd or Captain Feltham?

A. No, sir. If they gave me any direct orders, I don't recall it.

Q. 45. Did they ever discuss with you the reason why you were to use an outside scaffold?

A. If I remember correctly, Mr. Roberts told me that either Mr. Dodd or Mr. Feltham, Captain Feltham, made the statement to him that, if they wanted a good looking job of brick work, they would have to use an outside scaffold, and if they insisted on them using an inside scaffold, they would regret it.

762 Q. 46. So the brick work was then done on an outside scaffold on the rest of the job?

A. Yes, sir.

Q. 47. In your opinion, based on your experience in this line of work, could brick masons have laid the brick properly, in accordance with the specifications, from the inside, without the use of these outside scaffolds?

A. The last job I was on in Washington with Mr. Butcher, there was 18,000,000 bricks laid in nine months on the Agriculture Building, and every one of those brick—that is a Flemish bond job—and they were laid with the scaffolds I just mentioned, the type scaffolds I just mentioned.

Q. 48. And without any outside scaffolds?

A. No, sir. Well, you might call it an inside-outside scaffold.

Q. 49. Such an outside scaffold as was used on the Roanoke job?

A. No, sir.

Q. 50. You haven't answered the direct question I asked you, the substance of which is, could your brick masons have built the brick work according to the specifications without an outside scaffold, working from the inside?

763-764 A. On a building no higher than that is, they could.

By the COMMISSIONER:

Q. 51. And on this particular building, it is your opinion that they could have done it without an outside scaffold?

A. Yes, sir.

By Mr. BALL:

Q. 52. I ask you, also, Mr. Phipps, if you know whether it would be more expensive to lay brick from outside scaffolds than from inside scaffolds, as we call them?

A. I would say considerably.

Q. 53. Considerably more expensive?

A. Yes, sir; absolutely.

Q. 54. Is it true that, if you aren't using any outside scaffolds—does it cost more for the mason to do the brick work from the outside scaffold than from the inside scaffold, excluding the cost of the outside scaffold?

A. A bricklayer can lay more brick when he is over his work, looking at it, setting his joints and his bond, than he ever could standing on the outside and trying to tell whether it was straight, or not. If a man is building a wall that he is on the outside of, he has to be governed and guided by his level all of the time.

765 Q. 55. That was one of the reasons given by the inspectors for requiring or authorizing outside scaffolds, that they couldn't strike the joints properly from the outside?

The COMMISSIONER. Confine your answer, Mr. Phipps, to any instructions or statements made by these inspectors. Do not give us what someone else has told you.

The WITNESS. I will answer it this way: that at the very beginning, before the scaffolding was decided on, whether the work could be done according to the specifications. There was this particular piece of work that wasn't up very high, that had been rejected. At that time, I knew the type of joint, but then they said, "You must use the straight edge," so the indentation of the sharp edge of the tool should be straight through the center of the joint. I overlooked that part. The Homewood joint is not the common name for the joint, but the bricklayers call it the grapevine joint, and the reason they call it that is because they run it through at random, and it is every which way.

By Mr. BALL:

Q. 56. It isn't a straight joint?

A. No, it isn't a straight joint, but these particular specifications did call for a straight joint. After this particular piece of work had been condemned and we righted it, Mr. Roberts came over there and cited me to that little part in the specifications, saying that the joint must have a straight edge on it. That is when the scaffolding proposition was settled once and for all. We didn't lay any more of them just from the floor to scaffold high, but then we started scaffolding on the outside.

Q. 57. In your judgment, based on your experience, could a brick mason strike these joints, as required by the specifications, as well from the inside as from the outside scaffold?

A. I don't see why.

Q. 58. What is your answer; yes or no?

A. Yes.

Q. 59. Do you recall the incident when the brick on the first floor on one of the buildings had not arrived; and the suggestion was made that they use some ground brick, or leave them out entirely, and put in wooden blocks until they got the brick?

A. I don't remember that in detail. There was some discussion as to whether or not that would be good construction. We wanted to go ahead with the work and not wait for the moulded brick, and if I understand correctly, the brick that was submitted was of a different shape and the manufacturer furnishing the job offered to grind some, and I think he did grind some of these brick and possibly submitted them, in order to get us started. That changed the texture of the brick and it didn't look right. Anyway, the question was brought up to substitute some other kind of material, either common brick, or a two-by-four, or whatever would fill up this particular required height of brick in the course of mortar; and take them out and put in the others when we came back. So the instruction I had was to just stay off of it; that the inspector would not permit it.

769 Q. 60. If that plan had been adopted, would it have weakened the wall or have injured the building?

A. I wouldn't think so, due to the fact that that first course of brick only has a 2-inch bearing back of it. That particular brick was resting on the floor, on the stone water table.

Q. 61. What was the thickness of that wall?

A: Twelve and one-half inches.

769 Q. 62. I will ask you to look at Plaintiffs' Exhibit 26,

714 which I hand you, and see if you find that that first course of brick that we are talking about, when you didn't have on hand the brick that were to be used permanently?

A. That is the first course, or bull nose.

Q. 63. Now, if that had been left out temporarily, to be supplied later, your testimony is that it would not have injuriously affected the construction?

A. I don't see how it possibly could, because this [indicating] is the floor line here, and this second course only bears 2 inches of this brick. The balance of it is back on the concrete slab.

Q. 64. If temporary material had been put in there, would there be any difficulty in removing it?

A. Yes; it adds to the cost a whole lot.

- 770 Q. 65. I mean any physical difficulty in removing it?
A. I wouldn't think so.

Q. 74. Going back to the inside scaffolds, I was asking you if you knew of any notable instance where they used this Flemish bond and the inside scaffold entirely, and to refresh your memory on the subject, I ask you about the Williamsburg, Virginia, project?

A. I worked for six months, almost six months with the Restoration people in Williamsburg in 1931. That type of work is very similar to this type of work. The difference is that, later, when they put in the arches and quoins, they were rubbed—that is, the face of it was rubbed off to cause a wide contrast between the arches and the sill, and all that work was done overhand.

771-772 Q. 75. You say overhand; that means from the inside scaffold, without an outside scaffold?

A. Yes, sir.

Q. 76. Overhand?

A. Yes, sir.

Q. 77. That is one of the terms the brick masons have?

A. Yes, sir.

Cross-examination by Mr. WATSON:

X Q. 92. Who inspected your work on the job?

A. Mr. Dodd and Captain Feltham.

X Q. 93. Did either one of these inspectors require you to tear down or tear out any of the work that you performed?

A. A small amount, on account of the brick being wet, is about the only thing I can remember.

X Q. 94. That was a small amount? What do you mean by that?

A. Well, I would say the whole business didn't amount to 4,000 or 5,000 brick.

X Q. 95. You consider that a small amount of brick on a job of that kind?

A. Yes, sir.

X Q. 96. Now, the brick was wet, was it?

A. That was the cause of that brick wall becoming out of level and the mortar running down over the face of it.

X Q. 97. The brick would slide, in other words, when they were laid wet?

A. Yes, sir.

X Q. 98. And why did you lay them wet?

A. Captain Feltham ordered the brick to be wet.

X Q. 99. Is that the usual and customary way of laying bricks?

773-774 A. No, sir.

X Q. 100. You examined the specifications, did you, before you went on the job?

A. Yes, sir.

X Q. 101. You read them over?

A. Yes, sir.

X Q. 102. Did the specifications require that the brick be wet when they were laid?

A. They did.

X Q. 103. Therefore, Captain Feltham was just carrying out the specifications and the contract?

A. Well, I would say it didn't say in the specifications any particular amount of water to be on the brick.

X Q. 104. How much water did he require on the brick?

A. Enough so that he could see they were good and wet, I suppose.

X Q. 105. What did you do, soak them in water overnight?

A. No; a Negro stood there with a hose in his hand for a long time.

X Q. 106. Captain Feltham was insisting that you carry out your part of the contract by seeing that the brick were wet, in compliance with the specifications?

A. Yes, sir.

X Q. 112. Now, tell us, Mr. Phipps, is the brick work on that building—is the building that you worked on Building No. 7?

A. I worked on all of them.

X Q. 113. Well, any of the buildings or all of the buildings that you worked on—would you consider that a first-class job, or a high-class type of work, or an inferior class of work?

A. I would say it is one of the best jobs in this particular section, considering the material that we used. In fact, there have been a lot of compliments passed on it.

775

JOHN T. CLARKE, recalled for further redirect examination on behalf of the plaintiffs, testified as follows:

Redirect examination by Mr. KILPATRICK:

R. D. Q. 117. Mr. Clarke, I believe you have testified that, during the progress of this job, you were in charge of Mr. Blair's office at Montgomery?

A. Yes, sir.

R. D. Q. 118. Did you have occasion to visit the job while it was under construction?

A. Yes, sir.

R. D. Q. 119. How many times?

A. Only once.

R. D. Q. 120. Only once; and when was that, approximately?

A. That was in May 1934.

R. D. Q. 121. On that occasion, did you have any talk with Captain F. ltham?

776 A. Yes, sir.

R. D. Q. 122. Tell us what occurred.

A. Shortly after I arrived at the job in the morning, Mr. Garden, of the Old Virginia Brick Company, came to our office with a problem in connection with this moulded brick course and—

777 R. D. Q. 123. May I interrupt you there and ask if this Plaintiffs' Exhibit 26 has on it a specimen of the moulded brick course that you are talking about?

A. Yes, sir.

R. D. Q. 124. Is that the course that is marked in ink?

A. It is; yes, sir. We had ordered these brick from the Old Virginia Brick Company, and they had been delayed in manufacturing them. We were ready to start the brick work above the first floor level on Building No. 7, where this moulded brick would be needed, and we had gotten permission to grind some brick to that shape and use it on Building No. 7, because of the fact that the moulded brick were not ready.

R. D. Q. 125. Where had that permission come from?

A. Mr. Garden had gone to Washington to get the approval of this special brick.

R. D. Q. 126. You weren't present?

A. No, sir.

R. D. Q. 127. Go ahead.

A. That morning Mr. Garden brought in one of these ground brick—ground in the proper shape—and showed it to us, and said the texture of this brick—the texture of this ground

778 surface, was not the same as the moulded brick, and he said,

"I would hate very much to see it go in the building, because I don't think it would look good."

R. D. Q. 128. Mr. Clarke, please let's not have any conversations with people, other than the Government's representatives, if you can avoid it, and just tell us what was done, unless they were present.

A. We went then to Captain Feltham to discuss that problem.

By the COMMISSIONER: .

R. D. Q. 129. You and Mr. Garden?

A. Mr. C. W. Roberts and Mr. Garden and I went to Captain Feltham's office. I greeted the captain, because I hadn't seen him for some time and—

By Mr. KILPATRICK:

R. D. Q. 130. You had known him before this job, had you?

A. Yes, sir; on the Atlanta Veterans' Hospital job. I then told him of our problem, and asked him if it would be all right for us to insert, in place of this moulded brick, a piece of timber and go ahead with the work, and then later on, when we got the moulded brick, slip this piece of timber out, put the mortar in there and put the moulded brick in and point it up in place. For some reason——

R. D. Q. 131. Just tell us what he said in response to that.

A. As nearly as I can repeat it, he said, "No, God damn it, no! You have gotten approval of that brick and now, by God, you are going to use it."

R. D. Q. 132. That was in the presence of whom?

A. Mr. C. W. Roberts and Mr. Garden.

780 Re-cross-examination by Mr. WATSON:

R. X Q. 163. Your testimony with reference to the bolting of these pans—do you remember whether or not the specifications required that the pans be bolted?

A. They did not.

R. X Q. 164. Who required you to bolt the pans?

A. The inspectors on the job.

R. X Q. 165. Those pans had been used before, hadn't they?

A. Probably.

R. X Q. 166. They were not new equipment?

A. I know some were new and some were pans that had been used. It is the custom in the trade to rent these pans. The steel companies own them and rent them to the contractors, and after being used on one job, they are reconditioned and shipped
781 to another job; and they were used on several consecutive buildings in this particular group. On Building No. 6, when we were not required to use them—not required to bolt them, we were using pans that had already been used on other buildings.

R. X Q. 167. Have you charged up any cost for the use of these pans in your estimate, in your tabulation here of the costs?

Mr. KILPATRICK. To which exhibit are you referring, Mr. Watson?

Mr. WATSON. Well, all of them. He has got numerous costs here. I am referring to the costs of these pans.

The WITNESS. The only place where the cost of the rental of those pans is included would be in the exhibit which shows our total loss on the job.

By Mr. WATSON:

R. X Q. 168. All of these pans were rented, and not bought by your organization?

A. That is correct.

By the COMMISSIONER:

R. X Q. 169. When you rent them in that way, are you permitted to bore holes in them, or do anything you want to with them?

A. This is the only instance in which we have ever been required to bore holes in them, or bolt them together, or damage them in any way.

By Mr. WATSON:

R. X Q. 170. Now, Mr. Clarke, as to the delay on this 782 brick that you spoke about, when you testified about the moulded brick, how long did your firm shop around and bargain for brick before they started work?

A. I don't know the date on which we bought the brick, but it was before we ever came to Roanoke to start the job. Mr. C. W. Roberts came here the 1st of January, and he was a party to the purchase of the brick in Montgomery before he came up here. We wrote to various manufacturers who were interested, and told them that we were going to purchase the brick on a certain date, and several of them came to Montgomery, and they all wrote out their bids and handed them in, and we opened the bids and announced the successful bidder both for face brick and for common brick and hollow tile at that time.

R. X Q. 171. Were you delayed in the delivery of this brick at any time?

A. We were delayed a few days in receiving that particular moulded brick that I referred to a while ago. We started off the brick work on Building No. 7.

R. X Q. 172. Did the inspectors get after you for the delay?

A. I don't recall.

R. X Q. 173. Did you get any complaint of any kind?

A. We had numerous complaints from them for delay 783. in the construction work, but not in connection with this particular thing, that I recall.

R. X Q. 174. What was the delay—what was the complaint on the construction work?

A. The cause of our greatest delay was the failure of the mechanical equipment contractor to perform.

R. X Q. 175. Any others that you can think of?

A. Yes; there were many delays in connection with the unreasonable inspection requirement of two hours notice for inspection.

By the COMMISSIONER:

R. X Q. 176. But of just what were they complaining? Of what did the inspectors complain on the job?

A. The general progress, which we couldn't possibly make, under the circumstances under which we were working and with the handicaps that we had.

R. X Q. 177. In other words, your answer to the failure to make progress, which the inspectors desired, was the several things which you have mentioned here?

A. Yes, sir.

By Mr. WATSON:

R. X Q. 178. Were you on the job when the 2-hour rule was adopted by the inspectors, Mr. Clarke?

A. No, sir.

R. X Q. 179. Do you know anything about it?

784-785 A. Only that we had letters from them about it, and that we had many letters and telephone conversations between the Montgomery office and the Roanoke office about it at the time. All of the correspondence from the job came to me; and I was a party to, I think, every long-distance telephone call between this office and the Roanoke office, either to talk, myself, or listen in on a branch line; and I was in close touch with what was going on all the time and the problems that were developing from day to day to perplex and handicap our forces.

R. X Q. 180. Getting back to this brickwork, were you required to erect brick walls with plumb centers and stretchers?

A. Mr. Watson, I wasn't on the job. I know only from the mass of correspondence and telephone conversations, and conversations I had with the men, and the one time I was on the job, personally.

By Mr. KILPATRICK:

R. X Q. 191. Mr. Clarke, I call your attention again to Plaintiffs' Exhibit 46-A, which is a statement of the Montgomery office expenses and salaries, which you have estimated are properly chargeable to the Roanoke job. I believe you have testified that your method of arriving at that ratio was to take the total net earnings under this contract, in proportion to the amounts earned under all of the contracts you were doing? That is the ratio you have used?

A. Yes, sir.

R. X Q. 192. Do you think that that proportion of your total Montgomery office expenses and salaries represents a fair proportion of the time that your Montgomery office employed or spent on this Roanoke job?

A. Yes, sir.

786 **Mr. JULICHER.** The plaintiff alleges that it was delayed by the Redmon Plumbing & Heating Company to the extent that it suffered damage and was not able to complete this job on the date planned. We expect to show that the Redmon Company in no way delayed the plaintiff, and that any delay which the plaintiff suffered was through its own fault, in not properly organizing and conducting the work.

The plaintiff further alleges that the Government officers on the job, Messrs. Feltham and Dodd, were so arbitrary and unfair so as to cause them added expense and delay in the completion of the work. We intend to show that the above-named officers were not arbitrary nor capricious nor unfair, and they will take the stand and testify in their own behalf. The plaintiff claims that certain traveling expenses were incurred by Messrs. Andrews and Ellingsworth in conducting diplomatic missions for the plaintiff in Washington, attending hearings, ironing out various disputes. We intend to show that there was no reason why the plaintiff company should have gone to this expense.

The plaintiff claims that, by reason of wage disputes, in which they state the United States required that the plaintiff contractor pay either 45 cents an hour for unskilled labor or \$1.10 for skilled labor, and that there was no intermediate class of labor. We intend

787 to show that there never was any such requirement; and, as a matter of fact, the plaintiff company did use an intermediate class of labor.

That same statement is true as to the claim of the Roanoke Marble & Granite Company.

I would like to call Captain Feltham at this time to the stand.

P. M. FELTHAM, a witness produced on behalf of the defendant, testified as follows:

788 **Direct examination by Mr. JULICHER:**

Q. 1. Will you give the reporter your name and address and age?

A. P. M. Feltham; my present address is Edgefield, South Carolina; my age is 57.

Q. 2. Where are you employed at the present time?

A. At the Veterans' Administration.

Q. 3. How long have you been employed there?

A. Approximately 20 years.

Q. 4. What is your official position?

A. Supervising Superintendent of Construction.

Q. 5. What do your duties include?

A. The general supervision of construction in the South Central States.

Q. 6. That involves a good deal of travel from station to station?

A. Yes.

Q. 7. How long have you been in this kind of work?

A. Since leaving college in 1899.

Q. 8. Where did you go to college?

A. The Forter Military Academy.

Q. 9. What did you study there?

A. Engineering construction and general academic work.

Q. 10. Did you graduate as an engineer?

789 A. No; there is not a course of engineering with graduation of engineering. They do not give you a degree of engineering there, but you study it.

Q. 11. Since that time, you have been in the construction business?

A. After leaving college, I was employed by the Plant System of Railways, now the Atlantic Coast Line, as rodman, instrument man, and draftsman, for approximately $2\frac{1}{2}$ years. After severing my connection with the railroad, I was employed by W. B. Smith Whaley, of Columbia, South Carolina, originally from Charleston. It was my good fortune to be employed by one of the most outstanding engineers in the South. After severing my connection with Mr. Whaley, who had transferred his activities to Boston, I was employed by J. E. Serrine, of Greenville, South Carolina, for 11 years. My duties with him were draftsman, head draftsman, and in charge of all construction.

During my period with Mr. Whaley, I was employed as draftsman, instrument man, transit man, and had general supervision of two of the largest cotton mills, which were being built at that time, and which were located in Columbia, South Carolina, which involved the expenditure of \$6,000,000, the one at Lancaster, South Carolina, involving the expenditure of \$5,000,000, Colonel LeRoy Springs being president of this project.

During my period of employment with J. E. Serrine, of Greenville, who at that time and is at the present the largest textile engineer in the South, I had charge, after leaving the drafting room, of all surveys, all field surveys; that is, surveys of
790 hydroelectric power and hydroelectric plants; also the general supervision of 62 cotton-manufacturing plants.

Leaving Mr. Serrine in 1916, I was chief engineer of the Georgia & Northern Railroad, relining and rebuilding and estimating for the appraisal of the road. In 1918 I severed my connection with it and entered the Army as captain in the Engineer Corps. I was severely injured September 18, 1918, and then confined to Army hospitals for a period of 22 months. After being honor-

ably discharged from the Army, I entered the Government service, in the Public Health Service, in the construction of hospitals for the Public Health Service, which was afterwards taken over by the Veterans' Bureau, and then with the Veterans' Administration, and I am still connected with that branch of the service.

Q. 12. Captain Feltham, where were you during the latter part of 1933, during the entire year 1934 and part of 1935?

A. In December of 1933—no; prior to that date, I was all over the South, inspecting buildings for the Veterans' Administration, the construction of buildings for the Veterans' Administration. Part of the time in 1934 I was stationed at Roanoke, Virginia.

Q. 13. What was your job there?

A. Superintendent of construction.

Q. 14. Did the Veterans' Administration have a group of buildings going up there, at that time?

A. Yes, sir.

Q. 15. And you were superintendent of—supervising superintendent of construction there?

A. Yes, sir.

791 Q. 16. When did you first arrive on that job?

A. I don't recall the exact date, but I think it was between the 15th and 20th of December 1933.

Q. 17. Was the Algernon Blair Construction Company on the job at that time?

A. No, sir.

Q. 18. Do you know whether they had a contract to do this work, at that time?

A. They had a general contract.

Q. 19. Had they been notified to proceed with the work, or do you know?

A. Yes, sir.

Q. 20. Had they done anything on the job, up to the first of January?

A. Nothing whatever.

Q. 21. They had brought in any machinery?

A. Not that I know of.

Q. 22. Any equipment?

A. It wasn't delivered on the site, if they had.

Q. 23. I understand that the Blair Company received their notice to proceed with the work on December 19. This is a matter of record. How long after they received that notice are they supposed to proceed with their work; do you know?

A. In at least 10 days, but they could have proceeded at any time.

792 Q. 24. Now, from your experience, do contractors usually wait 10 days, or do they immediately proceed with the work?

A. Some contractors start before they get notice to proceed, after being advised that their bid was low.

Q. 25. And being sure they had the contract?

A. Yes, sir.

Q. 27. Do you know when Algernon Blair Company started to work?

A. I think it was the 15th of January 1934.

Q. 28. Can you identify the documents in this folder? Just pick them out and tell me what they are?

A. Yes; this is our daily log, a record of everything that transpired in connection with this contract, Blair contract, during the period of construction.

By the COMMISSIONER:

Q. 29. Did you keep that?

A. Yes, sir; kept it in my office.

By Mr. JULICHER:

Q. 30. Now, from that daily log, can you tell me how long the Blair Company had been on the job on January 1, 1934?

A. He had one superintendent and two engineers, two laborers, and five carpenters.

Mr. JULICHER. If the Court please, at this time, I would like to offer this daily log as Defendant's Exhibit.

The COMMISSIONER. Is there any objection, Mr. Kilpatrick.

Mr. KILPATRICK. May I look at it, please?

Mr. JULICHER. Yes.

793

By Mr. KILPATRICK:

Q. 31. This is the original.

A. Yes, sir.

Q. 32. How do you identify it, since it isn't signed?

A. Because they are transmitted with a letter to central office, and there is no need to sign it. Some of them probably are signed and some not.

Mr. KILPATRICK. Are you offering the record with which it was sent along, Mr. Julicher?

Mr. JULICHER. No; we do not have the letters. This is just the report as it was received. If you wish, we can have a certificate attached to it.

Mr. KILPATRICK. Mr. Commissioner, we have no objection to this going in, if we have the report or letter of transmittal which went with it. It seems to me it is an incomplete record.

The COMMISSIONER. You mean incomplete because of no letter of transmittal of this file?

Mr. KILPATRICK. I understand they had a report attached to it.

Mr. JULICHER. That is the report itself. The reports were submitted daily.

By Mr. KILPATRICK:

Q. 33. These were submitted daily to the Veterans' Administration?

A. Yes, sir; these were.

Q. 34. Unsigned.

A. Sometimes there would be a day elapse before they were sent in.

794

By the COMMISSIONER:

Q. 35. As I understand, that is supposed to be the history of the work from the department files, which you sent in, with its own letter, to the head office here in Washington?

A. That is it; yes, sir.

The COMMISSIONER. If there be objection, I will receive it. There being no objection, I will receive it. If you want it certified, counsel says he can have it certified.

Mr. KILPATRICK. May I ask one more question?

The COMMISSIONER. Yes.

By Mr. KILPATRICK:

Q. 36. In the letters of transmittal that went along with any of these daily reports, were there comments on the reports?

A. No, sir; nothing at all; just simply transmitting it, as is the form that we have to comply with.

The COMMISSIONER. It is a form they have to send in as a matter of routine.

Mr. KILPATRICK. We have no objection.

The COMMISSIONER. It will be so marked and received.

(Said daily log, so offered and received in evidence, was marked "Defendant's Exhibit A" and made a part of this record.)

By Mr. JULICHER:

Q. 37. Captain Feltham, you said that on January 1, 1934, the plaintiff company had about 10 men on the job?

A. What date was that?

Q. 38. January 1, 1934?

795

A. Yes, sir.

Q. 39. Can you tell from that record whether, or not, he had any men on the job before?

A. Just the preliminary work, which is executed by all contractors prior to starting actual construction.

Q. 40. Now, can you tell me whether or not they had any machinery on the job on January 1?

A. No, sir; they didn't.

Q. 41. Would you turn to January 15 and tell me what you find there, what is recorded there, regarding the machinery, grading machinery?

A. "On January 15, following equipment for Contractor Blair arrived on site, for excavating and grading purposes." Shall I list them?

Q. 42. No, that is sufficient reference.

A. Three pieces of equipment.

Q. 43. Now, on January 16, what happened?

A. The ground was officially broken at 10:00 a. m. in the morning.

Q. 44. On January 26, what does it say about building No. 13?

A. The excavation was completed on that building on that date.

Q. 45. Were any other buildings excavated at that time?

A. There was some general excavation being done; yes, sir.

Q. 46. Now, from your experience, Captain, tell me, if the plaintiff contractor had gathered all of its materials and equipment on the job during the 10-day period after receiving notice to begin, by this date January 26, how much of its excavating and rough grading could it have completed?

796 A. Approximately 5 percent, between $2\frac{1}{2}$ and 5 percent.

Q. 47. $2\frac{1}{2}$ to 5 percent of its grading, or $2\frac{1}{2}$ to 5 percent of the entire job?

A. Of the entire job.

Q. 48. Of the entire job?

A. Yes, sir.

Q. 49. How much grading would that include, nearly all of it?

A. No, no; $2\frac{1}{2}$ percent of the grading in that job. I don't know the exact yardage that was involved that was required to be moved by the contractor.

Q. 50. Will you look on that record for January 16 and tell me how much dirt had been removed, as of that date?

A. According to our estimates, 300 cubic yards.

Q. 51. That was February 16?

A. No; January 16.

Q. 52. No; I am talking about February 16. Excuse me.

A. 1,000 cubic yards were removed to that date.

Q. 53. 1,000 cubic yards.

A. Yes, sir.

Q. 54. Now, look on March 10 and tell me how many cubic yards of dirt had been removed?

A. An additional 1,000 yards.

Q. 55. Does that say additional thousand yards, or does it say—

A. No; it says 1,000 yards of dirt removed as of this date, March 10.

797 Q. 56. That means a total of 1,000 yards?

A. Yes, sir.

Q. 57. Now, on March 12, what, of importance, happened?

A. The question again, please?

Q. 58. What of importance happened on March 2? Do you find anything about concrete pouring there?

A. "The first concrete poured as of this date."

Q. 59. The first concrete was poured on that date?

A. Yes, sir; the foundation for the smoke stack.

Q. 60. What building was that?

A. Building 13.

Q. 61. I hand you Plaintiff's Exhibit 37; will you identify it for me?

A. This is the monthly and semimonthly progress reports made by the contractor, showing the percentage of work accomplished, and also showing—

Q. 62. That was made by the Government, for payment, not by the contractor?

A. This is the monthly and semimonthly—

By the COMMISSIONER:

Q. 63. Who was it prepared by?

A. By me, sir.

798 Q. 64. In the field?

A. In the field; yes, sir.

By Mr. JULICHER:

Q. 65. From that monthly report before you, can you tell me what percentage of the work the plaintiff had completed on March 31, three months after starting?

The COMMISSIONER. You are referring now to the work at large, or the excavating?

Mr. JULICHER. The entire job.

The COMMISSIONER. The entire job?

Mr. JULICHER. Yes, the entire job.

By Mr. JULICHER:

Q. 66. Do you know, from having previously referred to that— well, go ahead with the first question?

A. Well, the report is 5 percent of the contract.

Q. 67. How much is normal?

A. Normal is 9 percent. It was 4 percent behind.

Q. 68. Now, what is the normal progress based on?

A. On the work accomplished.

Q. 69. I mean, on what contract?

A. 420 days. The progress chart shows a certain percentage of the work should be accomplished by certain dates.

Q. 70. Showing this progress percentage based on 420 days as the contract allowance?

A. Yes, sir.

799 Q. 71. Or 300 days?

A. 420 days.

Q. 72. Then if you had attempted to get the percentage of the work completed, according to the contractor's schedule, in which he allowed himself 300 days, what percentage would he be behind? Here (indicating) he was about 4 percent behind; is that correct?

A. Yes, sir.

Q. 73. Between 18 and 20 percent; that is, according to the time set up by the contractor, 300 days.

Q. 74. Now, will you turn to April 12 of your daily log? Is there anything about steel in that daily log, in that report?

A. Yes; rigger to hoist structural steel on Building 13; on Building 15, "Columns and beam forms second floor, reinforcing first floor slab."

Q. 75. Now, on April 12, what buildings does that show were being excavated?

A. Buildings 17 and 18. They were excavated for footings and columns.

Q. 76. They were just being excavated?

A. Yes; and they were also excavating for the walls and footings on Building 18, and there was general excavation going on on Buildings 5 and 6.

Q. 77. Now, turn to April 14. On that date, is there anything in that report about the concrete wall on Building No. 7?

A. "Pouring columns and walls first floor west portion," on that date.

800 Q. 78. On Building No. 7?

A. Yes.

Q. 79. Where is that; is that the first floor, or what part of it?

A. Columns and walls for the first floor, that is, the columns and first floor slab. There is a note here, "Pouring columns and walls first floor west portion."

Q. 80. What happened on April 19?

A. Well, they were "excavating for column footings" on Building No. 1. They were "placing first floor wall forms. Erecting steel for first floor wall forms," Building No. 2.

Q. 81. What happened with reference to Building No. 4?

A. "One footing was found to be 5 inches too small," that is, in width.

Q. 82. What was necessary to be done?

A. "Attention of the Supt. was called to it before placing concrete. Concrete was placed afterwards with no correction. It was ordered to be removed."

Q. 83. Do you know that it was removed?

A. Yes, sir.

Q. 84. Now, please turn to April 21. Is there any mention of pans and leakage on that date?

801 A. Yes, sir; on Building No. 16, "Pouring roof slab. Contractor was stopped pouring at 1:15 p. m., when 50 percent of the slab was poured, on account of excess leakage of pans, letting approximately $\frac{1}{2}$ -inch concrete grout leak thru to floor below. Foreman ordered excess amount of water in concrete on east portion of roof slab." In other words, the concrete was working a little hard and the foreman ordered additional water, which wasn't according to the specified quantity.

Q. 85. Now, turning to April 27, is there a note regarding a certain meeting?

A. Yes, sir.

Q. 86. What does that say; read it?

A. "At 4:30 p. m. Mr. C. W. Roberts"—

By the COMMISSIONER:

Q. 87. Was a representative of Blair at that meeting?

A. C. W. Roberts; yes, sir. "At 4:30 p. m. Mr. C. W. Roberts called his foremen together * * * He stated that he had noticed the spirit of resentment on the part of the men when they were given inspection by the Government inspection force to make corrections and that from now on, he wanted it understood that when they were told to make any corrections—they were to go to it at once without protest. He further stated that he intended to cooperate with the mechanical contractor to the fullest extent. He closed by saying, 'From tomorrow on, we are going to do our duty!'"

Q. 88. Now, turning to May 4, is there anything in that
802 daily report with reference to concrete pouring operations?

A. I didn't quite catch the question?

Q. 89. Is there any mention with regard to concrete pouring operations?

A. Yes, sir; "General Contractor's Supt. Roberts suddenly shifted and decided to pour floor slab Bldg. #14 tomorrow (Sat. 5th). Steel finished about noon. One pipe fitter locating sleeves for carpenters and one electrician straightening conduit knocked out of place by steel men. #2. Four electricians laying out first floor deck center and east wings. One pipe fitter laying out center and east wing. No plumbers working."

By Mr. KILPATRICK:

Q. 90. "No plumbers working?"

A. No plumbers working on that building, that date.

By Mr. JULICHER:

Q. 91. On May 5, what do you find with regard to the steel columns?

A. On Building No. 13, they were erecting structural steel. That would be the steel columns.

Q. 92. Do you find anything else there?

The Witness. Yes; "About 2:30 this afternoon in checking column steel supporting second floor of Bldg. #7, it was discovered that in the case of twenty-one columns, the steel in place did not agree with the contract plans. About six of these columns which had been poured required especially heavy steel, in agreement with special sketch shown in column schedule sheet 7-10 for columns Nos. 21, 24, 33, 36, 113, 116, 121, 124, and the tearing out of such columns was directed. This report made to C. O. this date." In other words, they got the wrong steel in the columns.

By Mr. JULICHER:

Q. 93. And the specifications called for something else?

A. Distinctly called for 1/2-inch steel, but a mistake was made, I suppose, in putting the lighter steel in the columns.

Q. 94. What happened in that case; were they forced to take it out and replace it?

A. Yes, sir; it had to come out.

Q. 95. And did they lose any time by reasons of that, or do you recall?

A. No time to speak of, no; no more than is ordinarily lost on any job of that kind. It was just something they had to do over. That was all.

Q. 96. That they were required to do over; that couldn't stand, because the specifications stated otherwise?

A. Yes, sir.

Q. 97. What do you find on May 7, with regard to the Redmon Heating Company?

A. On May 7, this is in connection with the Redmon Heating Company, the mechanical contractor. It says: "All other mechanical work in connection with bldgs, up to normal." That Building No. 1, 2, 4, 5, 6 and 9.

Q. 98. You say that report states that the mechanical equipment contractor was up to normal?

804 A. Yes; on these buildings mentioned.

Q. 99. On those buildings mentioned? What buildings are mentioned there?

A. Buildings No. 1, 2, 4, 5, 6, and 9.

Q. 100. Will you look at May 9, please? Do you find anything there with reference to the Redmon Heating Company?

A. Yes, sir.

Q. 101. What does it say?

A. The contractor on that date had a force of 2 supervising engineers, 1 plumber, 2 fitters, 1 electrician; is installing sleeves and inserts on Buildings 1 and 17 and conduit and boxes.

Q. 102. Now, looking over that report, in your opinion, is that sufficient force to carry on the work without delaying the contractor?

A. Yes, because these buildings had only reached the stage where inserts and sleeves could be placed. The electrical conduits could have been placed in the floor before pouring. That is really the only work that is installed in a reinforcing concrete structure—I mean, structural concrete—the sleeves in the floors, the electrical conduits in the slab and the inserts for supporting the pipe.

Q. 103. Captain Feltham, do you recall any instances when the plaintiff contractor did not have form lumber on the job and, therefore, could not continue with its work?

A. Yes; quite a number of instances.

Q. 104. Quite a number of them?

A. Yes; through the whole life of the job.

805 Q. 105. What would you say; ten or more instances?

A. Ten or more; yes.

Q. 106. What would the effect be on the progress of the work, when there was no form lumber?

A. Well, it was at a standstill, because the forms must be constructed before the concrete is installed or poured.

Q. 107. Will you turn to May 14 and tell me if there is anything there regarding form lumber?

A. Yes, sir; no form lumber for Building No. 6.

Q. 108. Was there work going on at that time?

A. No; nothing at all.

Q. 109. No work could be done on that building, because there was no form lumber?

A. At that time; yes.

Q. 110. Now, turn to May 30; any mention of form lumber there?

A. Yes; no work on Building No. 6, "no form lumber."

Q. 111. That same building was still being delayed, because of no form lumber?

A. Yes, sir.

Q. 112. Will you look at June 2?

A. "Building No. 17: No work—no form lumber; 18: No Work." work."

Q. 113. What about rubblestone; is there any mention of the job-stopping work?

A. The rubblestone was delayed on account of nondelivery of sash for basement windows.

806 Q. 114. Will you look at June 5 and see if the basement sash had arrived yet?

A. "Building 18: No work. No basement sash. Building 19: 2 stonemasons."

Q. 115. Now, on June 6, what was your report with reference to the work performed by the mechanical contractor? That is June 6, now.

A. On June 6, mechanical contractor had employed on job 27 men. "Building 1—starting running, soil lines in basement. Other mechanical work up with gen. Constr. Building 2—

Q. 116. That is the matter that I wanted. You say that that report states that the mechanical contractor was up with the contractor?

A. Up with the general contractor on this particular building; yes; or these buildings.

Q. 117. What buildings were they?

A. Buildings 2 and 4. "Building 5: Two electricians, 1 plumber and 1 fitter sleeving and running conduit & boxes, basement floor deck."

Q. 118. Now, tell me, do you recall whether or not—

A. There is some more here about that same building, Mr. Julicher.

Q. 119. All right?

A. On Building No. 7 the mechanical work was up to the general contractor. On Building 13 there was no mechanical work being done. Building 15, work was up to the general contractor. Building 16 was up to the general contractor. Building 18, the work was up to the general contractor. Buildings 19 and 23, no work either by the general contractor or the mechanical contractor.

807 Q. 120. Do you recall whether or not the mechanical contractor in any way delayed the general contractor, Blair, at this stage?

A. No; he did not.

Mr. KILPATRICK. What date is that?

Mr. JULICHER. June 6.

B. Mr. JULICHER:

Q. 121. Now, will you take a look at June 13, 14, and 15, with reference to form lumber?

A. On June 13, on Buildings 5 and 6, there was no work being executed on account of no form lumber.

Q. 122. Now look at the 14th?

A. Buildings 5 and 6, no work, no form lumber.

Q. 123. Now, June 15?

A. Buildings 5 and 6, no work, no form lumber.

Q. 124. Now, June 25?

A. "Building #5: No work—no lumber."

Q. 125. Will you turn to June 26 and tell me how many men the mechanical contractor had on the job on this date?

A. 6 men.

Q. 126. 6 men? What were they doing?

A. 1 electrician on Building 13, 2 electricians installing conduits on Building 7, 1 electrician on Building 4, 2 electricians on Building 2.

Q. 127. Is that the date that the Redmon contract was terminated?

808 A. Yes, sir.

Q. 128. Now, on June 29, how many men were on for the mechanical contractor?

A. 15 men; 3 men in supervisory positions, 4 plumbers, 3 plumbing helpers, and 5 electricians.

Q. 129. That was by the Maryland Casualty Company?

A. Yes, sir.

Q. 130. Now, will you turn to August 1 and tell me how many men were on the job at that time, on the mechanical equipment contract?

A. The Virginia Engineering Company—

Q. 131. The Virginia Engineering Company took over the job at that time?

A. Yes, sir.

Q. 132. After Redmon defaulted?

A. Yes; it was awarded to the Virginia Engineering Company by the Maryland Casualty Company.

Q. 133. How many men did they have on the job?

A. On August 1, Virginia Engineering Company had 107 men; 7 in supervisory positions, 22 plumbers, 21 plumbers' helpers, 11 steamfitters, 10 steamfitter helpers, 18 electricians, 7 electricians' helpers, 1 chauffeur, and 10 laborers.

Q. 134. Now, I notice from those figures that you have given there, and those previously given, that there was apparently
809 a greater number of men working there under the Virginia Engineering Company than there were ever on the job under

the Redmon Company. Can you explain why that condition existed?

A. Well, in the first part of the job, there was very little for the plumbers to do; and as the job increased, the mechanical force must increase.

Q. 135. Then would you say that the biggest part of the mechanical equipment contractor's work comes after the first work is well along?

A. Yes.

Q. 136. Rather than at the beginning?

A. Yes, indeed.

Q. 137. Is there much he can do at the beginning?

A. Only in erecting the concrete work, it is necessary to place the sleeves in the floors to receive the pipe going through the floors, the hangers for his pipe, and his electrical conduits. That is all that can be done until the job is practically bricked in, although in some instances they run the vents before the brickwork is done, and they run some pipe.

Q. 138. Is there much labor necessary to put in the sleeves?

A. Oh, no.

Q. 139. One man can do a good deal of sleeving?

A. Yes; one man can keep ahead of any pouring on a job of this size.

810 Q. 140. Is the temperature included in that daily log you have before you?

A. Yes, sir; the temperature on that date was 78 degrees.

Q. 141. Where do you get the temperature, from your own thermometer?

A. Yes, sir.

Q. 142. Would you be able to tell me, from that record, whether or not there was any freezing condition in November and freezing weather in November?

A. Yes, sir.

Q. 143. Would you be able to tell from that report when it was too cold to work?

A. Yes, sir.

Q. 144. Will you just take a quick look through the month of November and tell me whether there was any freezing temperature during that month, November 1934?

A. On November 1, it was 68 degrees.

Q. 145. Just run through there and tell me whether there was any freezing temperature, or whatever it was?

A. According to our report and temperature, the lowest temperature during November was 34 degrees Fahrenheit, and the highest temperature was 80 degrees.

Q. 146. Captain Feltham, did you receive a copy of the Blair Company's progress schedule as they anticipated they would carry on the work?

811 A. Not for the whole contract. At various times the contractor's superintendent brought in a weekly schedule, showing the work he expected to execute the next week, for a time, but not through the life of the job.

Q. 147. Do you recall that he submitted a progress schedule for the entire job, at the beginning of the work?

A. I don't ever recall seeing it. It might have been submitted to the office, but I don't recall it.

Q. 148. Captain Feltham, was there much rough grading work that had to be done on the site by the general contractor?

A. Yes; there was a considerable amount of grading and leveling off.

Q. 149. Was this work necessary to be done before the outside trenching by the Redmon Company could be done?

A. It should have been done before the underground work was put in.

Q. 150. Why do you say that?

A. Well, had the trenching been done prior to the general excavation, it would have required the mechanical contractor possibly to dig 4 or 5 feet of dirt, which has to be moved by the general contractor. Then, again, if those underground lines had been installed, it would have been soft, and in going over it the trucks would have settled in the ditches and cause a considerable amount of trouble. That is the way the job should have been carried out.

812. Q. 151. You say that the rough grading should have been done first? Wouldn't the temperature have interfered with that, since it was done in cold weather?

A. No; not much at all. The cold weather couldn't possibly interfere with the excavating. It is the general grading I am speaking of.

Q. 152. The rough grading?

A. Yes; the rough grading.

Q. 153. Has it been your experience that there is much cold weather in Roanoke and vicinity?

A. There isn't enough cold weather in that section of Virginia to delay any grading work, because the frost line is only about 2½ inches.

Q. 154. During the time that you were on this job, what was the state of your health?

A. Pretty good.

Q. 155. Were you off, sick, at any time; did you have any sick leave?

A. I think I had sick leave for 4 or 5 days when I was in Atlanta. Of course, there were days when I didn't feel very well on account of those old wounds, the 41 in my body, and which naturally gave me some trouble, but not enough to keep me off the job. I was absent from the job quite a number of times, but I was on other duties. I have a record of that
813 in my brief case, if you desire it, and the dates. During that period I had general supervision of work in Florida, Georgia, Alabama, Louisiana, Mississippi, and the Carolinas.

Q. 156. I understand you were supervising superintendent for that area.

A. Yes; but I was making Roanoke my headquarters.

Q. 157. But you spent most of your time in Roanoke, on this job?

A. Yes, sir.

Q. 158. Captain Feltham, can you say how much work the Blair Company should have accomplished before it was necessary for the Redmon Heating Company to come in and do work?

A. Well, the general percentage, or the percentage on the whole contract?

Q. 159. Now, as I understand it, the general contractor had to do a certain amount of work before the mechanical-equipment man could come in?

A. Yes, sir.

Q. 160. What would you say, generally, he had to do before the mechanical-equipment man could come in?

A. Well, it was necessary to do all of the excavation for the buildings, install his footings, and then build his forms for his walls, concrete walls, for all of the buildings, and maybe a few sleeves were put in walls and some boxes and electrical conduits to be installed in the forms. One man, one electrician
814 and plumber could keep well ahead of the contractor until he reached the first floor slab. Then there is the same procedure of installing the conduits and sleeves, which is simply a piece of pipe cut off a certain length and erected on the form and concreted in.

Q. 161. Do you say you don't remember seeing a copy of the plaintiff's progress report that he submitted, at the time the work was started?

A. No; I don't recall it, at all.

Q. 162. Do you know whether the plaintiff had anticipated finishing the job on November 1, 1934?

A. Well, I have heard it rumored it was possibly a month or two before that, that they contemplated finishing it; but I

never pay any attention to a contractor's estimated time for completion.

Q. 163. You are only concerned with the contract period?

A. The contract period; that is all; because most contractors fall down on their estimates of time.

Q. 164. In your opinion, could the general contractor have finished this job by November 1, considering what it had done the first three months of the contract?

A. No; they couldn't.

Q. 165. You say it was impossible for them to finish it?

A. They couldn't have done it; no, sir.

Q. 166. Suppose they had put on an extra large force of men and forced the work—

815 A. Well, of course, if the contractor wished to go to extra expense and have two shifts on the work, or three shifts, they might have possibly done it, providing they could have forced the mechanical contractor to do the same thing, but the mechanical contractor—

Q. 167. You say, providing they could have done it?

A. Yes, sir.

Q. 168. Providing they could have forced the mechanical contractor to do the same thing?

A. Yes; but he couldn't have forced him to do it, because the mechanical contract was between the United States Government and the Redmon Company and afterwards the Virginia Engineering Company. There were two separate contracts.

Q. 169. Supposing the contractor was able to push his work along at a rapid rate, wouldn't it be necessary for the mechanical-equipment contractor to do the same thing?

A. Absolutely; yes.

Q. 170. He would have had to follow along after the general contractor?

A. Yes; and in some places, ahead of the general contractor.

Q. 171. I didn't get that last?

A. In some cases, ahead of the general contractor, in running the pipes when they were constructing the partitions, for instance.

816 Q. 172. Did the general contractor finish its job within the contract period?

A. Yes.

Q. 173. And the mechanical work was finished at the same time?

A. At the same time; yes.

Q. 180. Do you remember Mr. White, of the Redmon Company?

A. Yes, sir.

Q. 181. What was his official position?

A. He was superintendent for the Redmon Heating & Plumbing Company.

Q. 182. After the Redmon Company's contract was terminated, do you recall whether or not he continued on the job?

A. He continued right on, and his wages were paid by the Maryland Casualty Company.

Q. 183. And after the Maryland Casualty Company turned the job over to the Virginia Engineering Company, did he continue on?

A. He continued on with the Virginia Engineering Company.

Q. 184. At any time, was the work ever suspended?

A. No.

Q. 185. Referring particularly to that period between the termination of the Redmon contract and when the work was taken over by the Virginia Engineering Company?

A. When the representative of the Casualty Company 817 arrived on the station, he immediately contacted Mr. White; and Mr. White, with the force that he had on that date, continued to operate until the contract was awarded to the Virginia Engineering Company by the Maryland Casualty Company.

Q. 186. In your opinion, did the Redmon Company cause the Blair outfit any actual delay?

A. I don't consider so.

Q. 187. Did the Blair Company delay the Redmon Company in any instance?

A. In one or two minor instances; yes. One of the principal complaints was that the Redmon Company wouldn't install the conduits and sleeves fast enough to suit the general contractor. However, the general contractor wanted to pour immediately after the steel was in place, thereby causing himself delay by failing to give the Redmon people some time to install their work.

Q. 188. You mean after they set the steel up, they had to do—

A. A certain length of time—they go along together; but at times, when a plumber or electrician or steam fitter had some work to install, he installed it after the concrete reinforcing steel had been placed; and there were always some delays in the entire job, one way or another.

Q. 189. What is the general procedure in that matter, does the general contractor let the mechanical-equipment man 818 know that he is ready to come in?

A. Yes; that is the regular procedure.

Q. 190. Do they do that through you, or is that done between themselves?

A. That is done between themselves.

Q. 191. Did you receive any complaints along that line, on that score?

A. Oh, yes.

Q. 192. I hand you a letter dated April 17, 1934, which appears to have been written by you to Algernon Blair. Did you write that letter?

A. I didn't dictate it, but I signed it.

Q. 193. Did you know what was in that letter?

A. Yes; I recognize it.

Q. 194. I had you a letter dated April 12, 1934, apparently bearing your signature, addressed to Algernon Blair. Did you write that letter?

A. Mr. Dodd dictated this letter, but I signed it. All letters, while I was on the site, were referred to me for my signature.

Q. 195. I had you a letter dated April 23, signed by you, to Algernon Blair. Did you sign that letter?

A. Yes, sir.

Mr. JULICHER. I offer these three letters in evidence *ad* Defendant's Exhibit B.

819 Mr. KILPATRICK. We have no objection, subject to our right to examine our file and see if we received them, and offer rebuttal testimony, if we did not.

The COMMISSIONER. Subject to that reservation, they will be received and marked as "Defendant's Exhibit B."

(Said letter dated April 17, 1934, and two attached letters, so offered and received in evidence, was marked "Defendant's Exhibit B" and made a part of this record.)

By Mr. JULICHER:

Q. 196. I hand you a letter dated April 28, 1934, addressed to you from the Redmon Plumbing & Heating Company. Did you receive that letter?

A. Yes, sir.

Q. 197. Do you recall the occasion for this letter?

A. Yes; it was written to me by Mr. White, of the Redmon Heating & Plumbing Company, complaining that the general contractor didn't give him sufficient time to place his equipment sleeves.

Mr. JULICHER. We offer this as Defendant's Exhibit C.

Mr. KILPATRICK. I am afraid we must object to this, your Honor. This is apparently a letter from Mr. White, stating what Blair has and has not done at this particular time. I think Mr. White himself might testify to that, testify to what has taken place, but I do not believe this matter should be put in, when
820 we have no opportunity to cross-examine him on the statements therein.

The COMMISSIONER. You are objecting to it on the ground that it is a copy of a letter, or what?

Mr. KILPATRICK. No, sir; we do not object to it on that ground, but on the ground that it contains statements of one White, who was superintendent of the Redmon Heating Company, and that gentleman is not present for use to cross-examine him. In other words, it is hearsay testimony, insofar as the charges against Blair contained therein are concerned.

The COMMISSIONER. As I understand it, this Mr. White was on the job, representing the Redmon Heating Company, and this is a report, or rather, a letter, he sent to the Government inspector regarding the work he was supervising down there?

Mr. JULICHER. Yes; that is right.

Mr. KILPATRICK. As I understand it, he is writing to the Government inspector, criticising the plaintiff.

The COMMISSIONER. That is all right, but he is writing as a part of his business down on the job?

Mr. JULICHER. Yes; that is the way it was.

The COMMISSIONER. It seems to be a report or objection lodged with the Government man by the representative of the heating concern on the job they were both interested in.

Mr. KILPATRICK. And criticising Algernon Blair, as I understand it, for having done certain things.

The COMMISSIONER. Possibly, so; yes; I will receive it 821 subject to your objection, marking it "Defendant's Exhibit C," and you may have an exception, if you wish.

(Said letter, dated April 28, 1934, from Redmon to Feltham, so offered and received in evidence, was marked "Defendant's Exhibit C" and made a part of this record.)

By Mr. JULICHER:

Q. 198. Captain Feltham, do you recall whether there was any controversy between the Government inspector and Blair regarding the setting of pans for the buildings?

A. Yes, sir.

Q. 199. Could you tell us briefly what you remember regarding that?

A. Well, the pans, when they were received on the site, were old and had been bent and reshaped a number of times, and the steel was very soft, because it had been bent so much. The contractor endeavored to use these pans, but some were rejected and thrown off of the job.

Q. 200. Why?

A. On account of the shape. The contractor, the General Fireproofing Company, I think, had leased the pans to the general contractor, and had sent a representative to look these pans over on

the job, which is customary sometimes. However, they were so terribly worn that, when placed in the forms, there was a space anywhere from 1 foot to 2 inches in the lap. This couldn't
822 be allowed on account of losing the grouting from the concrete, pouring through between the pans, the lapping of the pans, onto the floor below, holding the rough aggregate in place.

Q. 201. Before you go on, I want to show you this photograph and ask you to identify it?

A. Yes, sir; this photograph was taken on September 12, 1934, and signed by me as supervising superintendent of construction and forwarded to Central Office for their records.

Q. 202. Now, what does that photograph there show?

A. Well, it shows the pans with a lap of anywhere from $1\frac{1}{2}$ inch to $2\frac{1}{2}$ inches.

Q. 203. By "lap" you mean the space between the pans that might permit the grouting to run through?

A. When the pan laps over, there was a space of anywhere from—this is an illustration; this [indicating] is one pan, and this is the lap over here, and the laps in these pans was as much as 2 inches. Therefore, when you are pouring your concrete with pans of that kind, the grouting runs through on the floor below, weakening the strength of your concrete to a considerable extent, because of the size of the leak.

Q. 204. What is grouting?

A. It is composed of cement and sand.

Q. 205. These pans aren't shown as bolted down, are they?

A. No; no; these aren't bolted down. They may have
823 been bolted down later on.

Q. 206. Could they have been bolted down on the job?

A. Yes.

Q. 207. Are there holes there for that?

A. These pans are manufactured with holes in them for bolting purposes.

Q. 208. They are manufactured with holes for bolting purposes?

A. Yes, sir.

Q. 209. Now, I show you another photograph—

A. This is a photograph of the second floor, Building No. 6, taken August 14, 1934, which shows a similar condition, the pans not properly bolted together, as you can see, the entire length of the building.

Q. 210. That shows the space between the pans, does it not?

A. Yes; in which the grout could run out very fast.

Q. 211. I show you the third photograph of this series of three. Will you identify that one, please?

A. This is a photograph of Building No. 5, taken October 1, 1934. This also shows that the pans are not properly lapped and fastened together.

Q. 212. From that photograph, are you able to see the holes where they might be bolted?

A. Yes, sir.

824 Q. 213. That actually shows the holes?

A. That shows the holes there where it might have been bolted.

Q. 214. Where it might have been bolted previously?

A. Yes; where it might have been bolted previously.

Q. 215. By whom were those photographs taken?

A. Taken by the contractor.

Q. 216. Taken by the contractor during the progress of the work?

A. Yes; taken by the contractor during the progress of the work.

Q. 217. Actually on this job?

A. Yes, sir.

Q. 218. Do they bear your signature?

A. Yes; they were submitted to me monthly and the photographs accompany the monthly vouchers.

Mr. JULICHER. I offer those three photographs in evidence as Defendant's Exhibit D.

Mr. KILPATRICK. We have no objection.

The COMMISSIONER. There being no objection, they will be received and so marked.

(Said three photographs, so offered and received in evidence, were marked, "Defendant's Exhibit D," and made a part of this record.)

By Mr. JULICHER:

825 Q. 219. Now, captain, when the grout runs out of these pans, what do you have left?

A. Nothing but stone or rough aggregate.

Q. 220. What value is stone, alone?

A. None at all.

Q. 221. It has no bearing value?

A. No; it will fall. If it hasn't sufficient grout left in the stone, it will fall down when the pans are removed, or when the forms are removed.

Q. 222. Now, Captain Feltham, can you state whether or not it is the general practice to bolt these pans in place, or are they just laid on as shown in the pictures?

A. New pans are very seldom bolted. Pans that have been used a number of times and have become so soft and warped,

to such an extent that they won't properly lap, have to be fastened in some manner.

Q. 223. Now, on this job, did you actually find where the grout had leaked through these pans?

A. Yes, and had filed complaint with the contractor numerous times.

Q. 224. Then that would indicate that the plaintiff had poured concrete on these pans, without bolting them?

A. Yes, sir.

Q. 225. It was after you found the grouting that you required them to be bolted?

826 A. Well, I don't recall. It was brought to their attention before any concrete was poured. Now, there is another thing you will have to take into consideration: An old pan, while the men are working over it, will be very flexible, on account of being handled so many times, that the weight of a man, who will step on one end of the pan, will separate it from the pan lapping over it. That is frequently the cause of letting a lot of grout go through, and in this particular form was caused from that.

Q. 226. Do you recall whether or not the plaintiff made any objection to bolting the pans?

A. Yes, indeed; he objected to it.

Q. 227. But you did require him to bot the pans, when you discovered that the grout was leaking out?

A. They had to bolt the pans to furnish us with the grade of concrete as was specified. There are various ways of keeping those pans together, besides bolting them.

Q. 228. There are various other ways of doing that?

A. Yes, sir. You can take a small piece of 2 x 4 and drive a nail through the hole in the pan to the piece of 2 x 4 to hold it, which can be very easily removed in wrecking the pans.

Q. 229. Will you explain to the Commissioner just what you mean by that, by the simplified method of bolting, by the use of one of those pictures?

827 The COMMISSIONER. I think I understand. He means driving the nail right through the hole.

The WITNESS. There is a hole in the pan, and you drive the nail straight down through it into a small piece of timber.

Q. 230. Using nails and wood in lieu of bolting?

A. Yes, sir; in lieu of bolting.

By Mr. JULICHER:

Q. 231. Does that make it easier to remove it?

A. Yes; all you have to do is take a wrecking bar and run it under between the pan and the piece of timber and give it a twist and it is off.

By the COMMISSIONER:

Q. 232. Pry it off, instead of unscrewing it?

A. Yes, sir.

By Mr. JULICHER:

Q. 233. As a matter of fact, you can't unscrew it?

A. No.

Q. 234. It would have to be cut off?

A. Yes.

Q. 235. Do they become rusty from the grouting?

A. No; the pan is removed after the concrete is set.

Q. 236. I am talking about unscrewing the nut from the bolt?

A. Well, it costs more to unscrew them than it would to take tools and clip them off.

828 Q. 237. Captain Feltham, do you recall a controversy regarding the road near the Parrott house?

A. Yes.

Q. 238. Will you tell us what you remember regarding that incident?

A. I merely wrote the contractor to comply to the specifications requiring the proper protection of the shrubbery and roads. Of course, the road by the Parrott house was to be removed, because it was in the grading limits, but they put up some bars, first, which were knocked down and never replaced, and after continuously requesting the contractor, verbally, to replace the, it became necessary to write that letter and to so notify them to comply with the specifications.

Q. 239. Was it absolutely necessary that the contractor use this road?

A. Oh, no; he had other roads.

Q. 240. There was another road near by?

A. Yes; he was building beyond this road, and this was a macadam road, but beyond the Parrot house up to the quarters was a dirt road, a clay road. This letter was written only after a very beautiful English holly had been apparently destroyed by the trucks running so close to it.

Q. 241. Was it close to the road?

A. Yes.

829 Q. 242. Was that road built to bear the weight of heavy trucks?

A. No; it was the approach to the residence.

Q. 243. Was it a gravel road?

A. No; it was a macadam road.

Q. 244. Was the plaintiff running heavy trucks over this road?

A. Oh, yes; he took lots of lumber and dirt and brick and building materials in general.

Q. 245. Do you recall any trouble about using the water in the swimming pool?

A. Yes; that was something. I remember one instance when the road men were doing the grading and hauling, were watering their stock in the swimming pool and destroying the trees and shrubbery and lawn, what lawn there was around the pool.

Q. 246. Did the contractor have any right to use this pool?

A. Well, I don't know whether he had the right to it, or not. We granted him permission to use it, because he designed the water supply himself, and he was pumping the Government pump and lines from over into the reservoir or the swimming pool, and the contractor installed the pumps at the swimming pool and pumped it through his system. There was nothing said in the specifications regarding the contractor's use of the swimming pool, but he was granted permission.

Q. 247. Mr. Roberts says on page 273 of his testimony: "Yes, sir; he (meaning you) immediately objected to my using the tanks and further water facilities there were on the farm." And then the question was asked: "Who made the objection?" and the answer is, "Mr. Dodd and Captain Feltham."

A. They could have used the tank, because they wrecked them.

Q. 248. They wrecked them?

A. Yes; I think, if my memory is correct, the specification provides for the general contractor to remove those tanks from the site, although there was no time specified to remove them. Therefore, if he decided to use them, he could do it and there was no objection whatever.

Q. 249. Captain Feltham, do you recall that there was any defective concrete poured by the plaintiff contractor?

A. Yes, sir; quite a lot of it.

Q. 250. You say quite a lot of it? Would you say there was enough to cause him any delay?

A. Well, I should say that, if it didn't cause delay, it caused a considerable amount of expense.

Q. 251. I show you these pictures. Can you tell me who took those pictures?

A. Yes, sir; I took them myself.

831 Q. 252. What do the pictures show?

A. They show faulty concrete work.

Q. 253. They were actually taken by yourself?

A. Yes.

Q. 254. I show you another group of pictures; did you take those pictures, too?

A. Yes, sir.

Q. 255. Now, you not only have faulty concrete, but what does this last picture show?

A. That shows some good concrete.

Q. 256. Why did you put that in?

A. To show that the mixture which was specified and approved by Central Office could be made into good concrete.

Q. 257. I show you a photograph marked 17; can you tell me what that shows?

A. Yes, sir; that shows when the contractor proceeded with his work, without installing his basement windows; and eventually, in measuring up for these openings, he made a mistake and it was necessary for him to do a considerable lot of cutting after the frames arrived, because the holes left were too small and the frames could not be installed.

Q. 258. Didn't it take extra time to cut out that concrete?

A. Yes, sir; extra time and extra money.

832 Mr. JULICHER. Before I go any further with this, your Honor, I would like to ask that these photographs be admitted as Defendant's Exhibits E and F.

Mr. KILPATRICK. We have no objection.

The COMMISSIONER. They will be so admitted and marked as "Defendant's Exhibits E and F."

(Said photographs, so offered and received in evidence, were marked as "Defendant's Exhibits E and F," and made a part of this record.)

By Mr. JULICHER:

Q. 259. I show you photograph No. 28 in Exhibit E, and ask you to describe what it shows?

A. It shows there is such faulty concrete existing in half a column, honeycombed to such an extent that it had to be removed and replaced.

Q. 260. The entire column?

A. The entire column, yes; the entire lower half of the column.

Q. 261. Can you attribute any reason for the pouring of such concrete?

A. The mixture for the concrete was all right, a little harsh as we term it, but it wasn't thoroughly spaded, placed in there hurriedly and merely thrown in the concrete forms.

Q. 262. Would that be a sign of poor workmanship, in your opinion?

833 A. A sign of poor placing of materials, and poor workmanship, of course.

Q. 263. I show you photograph No. 52 in Defendant's Exhibit F, and ask you to describe what it shows?

A. This shows a very large pocket under the form put in the basement wall to receive the basement sash. It shows that the concrete wasn't properly tamped or placed under this form, leav-

ing a void of the width of the opening and approximately 12 to 14 inches deep, in which no concrete was placed, exposing the reinforcing steel.

Q. 264. Do you usually run into this kind of work, in the course of a contract?

A. No; because the bottom member of the form is bored, so as to allow any air that may be underneath to get out and, therefore, not form an air pocket, as was done in this particular case. Whoever installed it evidently was inexperienced in placing concrete in places of this kind.

Q. 265. Captain Feltham, tell me this: Is it possible to pour concrete without honeycombing?

A. No; there is some surface honeycombing which we don't seriously object to, but when the honeycombing exists through an entire wall or entire column, it so weakens the structure that it has to be taken out and replaced, because no engineer would accept it; any reputable engineer.

Q. 266. Well, if there is just a small amount of honey-
834 combing, do you require that it be torn out and replaced?

A. No, no; in numerous places, even on this this job, where they plastered it up, we allowed them to do it.

Q. 267. You mean just plaster over the honeycomb?

A. Just fill the honeycomb over with plaster or cement.

Q. 268. Can you find in those photographs any honeycombing?

A. Oh, yes; there is what that is in this column (indicating).

Q. 269. That is honeycombing in there?

A. That is honeycombing where you can drive your arm through.

Q. 270. The very first picture?

A. Yes; the very first picture.

Q. 271. Captain Feltham, there was a bit of disagreement regarding the use of a portable mixing plant and a central mixing plant. Will you tell us, if you remember, just how that discussion arose, and what the ultimate outcome was?

A. That matter was discussed with the contractor's representative at the beginning of the job. In fact, he didn't really know what he wanted, whether he wanted a central concrete mixing plant, or whether he wanted several mixing plants at various parts of the reservation. He finally decided on building a central
835 mixing plant, and he was to mix all of his concrete in this plant. Later on, he decided that he wanted to put in several more small mixers and scatter them around. The concrete had to be gauged by the inspector, and he couldn't look after two or three mixers.

Q. 272. That is, the Government inspector had to be on the mixer, to see that they used the right mix?

A. Yes; to see that it was the right mix and the right texture and not excessive water, and things of that kind. Then the contractor's superintendent wanted to mix with several mixers, after we had agreed he would mix all of the concrete in one plant, and I objected to it. The contractor's representative went to Washington and I was overruled.

Q. 273. You didn't object to the use of a central mixer?

A. No; we had agreed upon that. That was thoroughly agreed upon.

Q. 274. And Mr. Roberts, I guess it was, wanted to use portable mixers?

A. Yes; and I objected to it, and the objection was taken to Washington and I was overruled and they did use another mixer. That was perfectly satisfactory to me, as they saw fit to do it.

Q. 275. What was the effect of that? Where did they use this portable plant?

A. Down at the utility group of buildings. I don't recall which building it was now, but the laundry or warehouse, the garage and boiler plant. They used it in that type of 836 building.

Q. 276. You were overruled by the Central Office and they did use a portable mixer. Was there any more difficulty over the use of that portable mixer?

A. No.

Q. 277. And they continued using both the portable mixer and the central mixer thereafter?

A. Yes, but the small mixer wasn't used to any great extent.

Q. 278. Captain Feltham, in cases where there are voids in the front of a column, as shown in photograph 13 in Defendant's Exhibit E, what did you have to do to correct that; did you have to take the whole column out?

A. Well, it depends entirely on how much honeycombing there is. This is a type of column—you were looking at this photograph upside down:

Q. 279. Well, in that case, what did you do?

A. Well, we would have to shore up the rift of the floor slab and force new concrete in it.

Q. 280. You say "force it in"; what does that mean?

A. Well, they use a dry mixture and drive it in.

Q. 281. With the use of a gun of some kind?

A. Sometimes, yes, they gunite it, what we call gunite it, but in this particular instance, it was shored up and the mixture driven in with a wooden wedge or hammer, or a wooden maul, at least.

837 Q. 282. Now, in the matter of conducting the pouring of concrete, do you recall whether or not the plaintiff contractor submitted a schedule of any kind?

A. The superintendent did, on quite a number of occasions, submit schedules showing where he was going to work for the week.

Q. 283. For whose benefit was that submitted?

A. For the benefit of whoever it concerned, the mechanical contractor, ourselves, and his own force.

Q. 284. Did that also give you a chance to send your inspector to that point?

A. Well, it was made for that purpose, I think, to give us—I say “us,” but as I said before, the parties concerned—an idea of what concrete would be poured during the coming week.

Q. 285. Now, I hand you two letters, one dated April 13, 1934, and the other dated April 12, 1934, bearing your signature, addressed to the Director of Construction, to which is attached an anticipated schedule for pouring concrete, apparently prepared by the Algernon Blair Company. Will you look at those letters and that schedule and tell me if that is correct?

A. Yes, sir.

Mr. JULICHER. I want to offer this as Defendant's Exhibit G.

Mr. KILPATRICK. No objection.

The COMMISSIONER. Without objection, it will be so received and marked by the reporter.

(Said letters dated April 12, 1934, and April 13, 1934 and schedule, so offered and received in evidence, were marked, “Defendant's Exhibit G,” and made a part of this record.)

By Mr. JULICHER:

Q. 286. Do you remember whether or not the plaintiff contractor submitted concrete schedules, as shown by that exhibit, regularly? Did he submit those things as a general rule?

A. Only for a short period of time, not through the entire job.

Q. 287. You say a short period of time; would you say 3 months or 4 months?

A. Possibly. I don't recall exactly. Possibly a couple of months.

Q. 288. Did he submit them every week for a couple of months?

A. Yes, sir.

Q. 289. Those schedules purport to show when and where he was to do his concrete work during that period; is that correct?

A. That he contemplated doing.

Q. 290. That he contemplated doing?

A. Yes, sir.

Q. 291. Was he able to stick to his schedule?

A. I don't recall that it was ever complied with exactly, without being 2 or 3 days behind.

Q. 292. Did you generally send the copies of those schedules in to the main office here?

A. I did; yes, sir.

Q. 293. And if the plaintiff failed to comply, did you always mention it in your letter, or is this the only example there is?

A. No, no; there is quite a number of them. Of course, I reported when the work was actually done, as listed in the schedule.

840 Q. 294. Now, in that letter of April 13, 1934, which is one of the letters of Defendant's Exhibit G. What were you reporting then? Just look at it and refresh your recollection.

A. Well, that is one instance when he notified me that the concrete would be poured, according to his schedule on April 10. This pouring was a day late.

Q. 295. That letter you are looking at shows or reports that the plaintiff's schedule had broken down; is that correct?

A. Yes; that is right.

Q. 296. I had you a telegram, dated April 26, 1934, from you to the Director of Construction; did you send that telegram?

A. Yes, sir.

Q. 297. Will you tell us what was the occasion for sending that telegram?

A. Because complaints had been made to Central Office, not through my office, by the contractor, the general contractor, that the Redmon Company had no men engaged in work, and this is my reply:

"Your telegram 23 Redmon regarding additional electricians stop two electricians now working first floor No. 7, will complete today stop two standing by at new location where they can work on any building available. Letter follows."

Mr. JULICHER. I would like to offer this as Defendant's Exhibit H.

841 Mr. KILPATRICK. No objection.

The COMMISSIONER. It will be so received and marked. (Said telegram dated April 26, 1934, from Feltham to Director of Construction, so offered marked, "Defendant's Exhibit H," and made a part of this record.)

By Mr. JULICHER:

Q. 298. I hand you a group of photographs for your identification. Will you tell me what they are, what they show, and whether or not that is your signature on the back of each one?

A. No, sir; that isn't my signature.

Q. 299. That isn't your signature?

A. No, sir.

Q. 300. What are they pictures of?

A. They are pictures of a building erected in Roanoke, Virginia, during the year 1938.

Q. 301. By whom?

A. By A. Farnell Blair.

Q. 302. What do the pictures show?

A. These pictures show that this contractor—

Mr. KILPATRICK. Your Honor, we object. We do not see the connection between a building in 1938 by someone other than the plaintiff contractor—

Mr. JULICHER. If the Commissioner will bear with me, I have a purpose in introducing these, not for the building, 842 itself, but to show that these pans were bolted, and to show how they look as compared with those other photographs where they were not bolted.

The COMMISSIONER. You are simply doing that to illustrate the practice of bolting and not bolting?

Mr. JULICHER. That is right.

The COMMISSIONER. The other contract and buildings have nothing to do with it?

Mr. JULICHER. Yes; that is correct.

The COMMISSIONER. I think your objection probably is good.

Mr. KILPATRICK. If that is the intention, as an illustration of how the pans were bolted on some other job, and purely for that purpose, I do not see that we have any ground of objection.

The COMMISSIONER. I will receive it on that theory, that it is simply to illustrate the practice. Without objection, it will be received and marked as "Defendant's Exhibit I."

(Said photographs of 1938 building, so offered and received in evidence, were marked, "Defendant's Exhibit I," and made a part of this record.)

By Mr. JULICHER:

Q. 303. I show you these photographs again. Can you tell from the photographs whether or not they are the same type of 843 pans used in the pictures marked as "Defendant's Exhibit D"? Are they the same type of pans?

A. Yes, sir.

Q. 304. Now, are these pans as shown in Defendant's Exhibit I, bolted?

A. Yes, sir.

Q. 305. Can you see the bolts?

A. You can see the bolts and the top of the nuts where the bolts went through.

Q. 306. Now, those circles that have been put in them in ink—who put those in?

A. I put them in, sir.

Q. 307. Do they indicate where the bolts are located?

A. Yes, sir.

Q. 308. Now, compare Defendant's Exhibit D, showing the pans not bolted, with Defendant's Exhibit I, showing the pans bolted.

A. This picture [indicating] merely shows the holes for the bolts, but no bolts are installed or inserted. This [indicating] shows the bolting.

Q. 309. And in Defendant's Exhibit D, this one here [indicating], it shows no bolting?

A. No bolting.

Q. 310. What else does it show? Does it show spaces?

A. That shows the perforation in the pans for bolting.

Q. 311. Does that show the space left where they were 844 not bolted?

A. Yes, indeed. These spaces are, approximately, I judge, from this photograph, an inch and a half in the lap of the pans.

Q. 312. Captain Feltham, do you recall that you, at one time during this contract, required that the plaintiff contractor give you 2 hours' notice before you could conduct an inspection?

A. An inspection of the steel; yes, I did.

Q. 313. What was the purpose of that order?

A. The purpose of that was, that I may be on the other side of the lot, looking at some work over there, and it might be a quarter of a mile from where I was to inspect the steel, or my assistant was to inspect the steel. We were all over the place. After the steel had been placed in accordance with the specification requirements, we were supposed to inspect it, and I asked the contractor's superintendent to give me 2 hours' notice in advance, so that I could complete what I was doing somewhere else and report to him within a period of 2 hours, which was done. We couldn't stand there and watch any group of men working. Consequently, when they were ready for an inspection, I asked them to give me 2 hours' notice, which any builder could tell when he would complete the job within 2 hours, and I don't think that was unreasonable.

Q. 314. How large a job did you have there; how many 845 buildings were there being built at the same time?

A. I think there was 14, if I am not mistaken, including all of the smaller buildings.

Q. 315. 14 at the same time, scattered over a wide area?

A. An area of approximately 200 acres, or about 150 acres.

Q. 316. Do you remember whether or not the plaintiff contractor complied with your request for 2 hours' notice?

A. Well, I can't say. He would send word to us and we usually got there as soon as we could and we inspected the work. Sometimes it wasn't ready for inspection, and we would have to go back again, and sometimes 2 or 3 times.

Q. 317. Do you recall that there were actual cases when you did have to return 2 or 3 times to make the inspection, because the work wasn't ready?

A. When it wasn't tied properly, the steel wasn't properly spaced and properly tied, yes.

Q. 318. Was that a regular practice—I mean, do you generally require that you be given 2 hours' notice?

A. Not necessarily 2 hours. Some contractors would ask for an hour. It depends entirely on the size of the job and how it is scattered out.

Q. 319. Do you remember when Colonel Tripp made a visit to the facility at Roanoke?

846 A. Yes.

Q. 320. Did he make an inspection?

A. He had an inspection of the poor concrete.

Q. 321. The poor concrete?

A. Yes; in Building No. 2.

Q. 322. What happened?

A. Why, he ordered me to require the contractor to remove the defective concrete in the columns and walls, which was built improperly, being 8 inches out of line.

Q. 323. That wall and those columns were already up, in place?

A. Yes; they were in place.

Q. 324. They had to be taken down?

A. Yes, sir; under instructions that were given me by my superior, Colonel Tripp.

Q. 325. Do you remember that any other Government representatives were sent down from the Central Office to the facility, to inspect the concrete?

847 A. Yes, sir.

Q. 326. Do you remember the names of those gentlemen?

A. Mr. Brown—I don't recall his initials, but he is structural engineer and made a specialty for a number of years of concrete work; also Mr. Fahy, structural engineer.

Q. 327. And why did they go down there, particularly?

A. Because of the poor concrete work and I wanted some representative from Central Office to see why I was making these complaints.

Q. 328. I hand you a group of letters and ask you to run through them and tell me whether or not you signed those letters in every instance? I believe they are addressed to Algernon Blair?

A. Yes; I signed these letters. I initialed a lot of them. Yes, sir; I signed these letters.

Mr. JULICHER. I want to offer these letters in evidence as Defendant's Exhibit J, in a group.

Mr. KILPATRICK. We have no objection.

The COMMISSIONER. They will be so received and marked by the reporter.

(Said letters, so offered and received in evidence, were marked, "Defendant's Exhibit J," and made a part of this record.)

By Mr. JULICHER:

Q. 329. I hand you a group of letters and ask you if you signed them?

A. Yes, sir.

848 Q. 330. In every instance, they are letters or copies of letters to Algernon Blair?

A. Yes, sir.

Mr. JULICHER. I offer them as Defendant's Exhibit K.

Mr. KILPATRICK. We have no objection, subject to the right to check our own records and see if they were received.

The COMMISSIONER. They will be so received and marked "Defendant's Exhibit K."

(Said eight letters, so offered and received in evidence, were marked, "Defendant's Exhibit J," and made a part of this record.)

By Mr. JULICHER:

Q. 331. I hand you a letter dated May 12, 1934, by you to Algernon Blair. Did you sign that letter?

A. Yes, sir.

Q. 332. That letter makes particular reference to the use of form lumber. Do you recall that controversy?

A. Yes, sir; I merely invite attention to Article 11, page 2-C-3 of the specification, "Which requires you to construct the forms to insure their being tight, stiff, true and plumb, well braced and sufficiently strong to carry the weight of the concrete as a liquid, together with the moving load of man and material, without appreciable deflection."

Q. 333. What was the occasion of that letter?

A. Because he wasn't building the forms properly; they were weak, some of them were giving away, and they were leaking terribly and losing the grout, and the effect of the concrete
849 was being destroyed by the loss of the grout.

Q. 334. Might that be the cause of some of the defective concrete shown on those photographs?

A. Yes; that probably was the cause of all of it, or nearly all of it.

Mr. JULICHER. I want to introduce this letter as Defendant's Exhibit L.

Mr. KILPATRICK. No objection, subject to the same understanding.

(Said letter dated May 12, 1934, from Feltham to plaintiff, so offered and received in evidence, was marked, "Defendant's Exhibit L," and made a part of this record.)

By Mr. JULICHER:

Q. 335. I hand you a folder of letters written to Algernon Blair, with reference to corrections and workmanship. Will you again look through those letters and see if you wrote those letters, or you signed those letters?

A. There is one letter here, dated July 11, 1934, signed by L. H. Tripp, Director of Construction.

Q. 336. Addressed to whom?

A. Addressed to Algernon Blair, 1209 First National Bank Building, Montgomery, Alabama.

Q. 337. Making particular reference to a letter dated April 21, 1934, written by you to Algernon Blair, appearing to have been received Saturday, April 21, 1934, at 2:00 p. m., by C. W. Roberts, can you tell me what was the occasion for that letter?

850 A. To discontinue pouring concrete on account of poor construction and leaky forms.

Q. 338. All of these letters, except the one written by Mr. Tripp, were signed by you?

A. Yes, sir.

Mr. JULICHER. I offer that folder of letters in evidence as Defendant's Exhibit M.

Mr. KILPATRICK. May I ask if this represents copies of all letters written by Captain Feltham to Mr. Blair on this subject matter of corrections and workmanship?

The WITNESS. No, indeed, there is quite a number more.

Mr. KILPATRICK. We have no objection, subject to the same understanding.

The COMMISSIONER. It will be received and marked by the reporter as "Defendant's Exhibit M."

(Said folder of letters, so offered and received in evidence, was marked, "Defendant's Exhibit M," and made a part of this record.)

By Mr. JULICHER:

Q. 339. Captain Feltham, can you tell me which is the proper method of installation, placing the reinforcing steel ahead of the electrical work—and that I suppose means conduits and various pipes—or vice versa?

A. Well, it depends entirely on the construction of your floor slab. You want to keep your conduits as near the surface as possible, because that is the part of the slab that is in compression and the load on the slab, when the slab is loaded—the bottom of the beam or slab is in tension. Therefore, 851 it is customary to place the electrical conduits or any piping in the concrete floor slab near the surface, near the top surface.

Q. 340. Are you able to state whether or not there were any delays incurred by the plaintiff, by reason of mistakes in the drawings submitted by the Government, or corrections that were made in drawings?

A. Well, in all drawings, there is more or less errors creep in. I don't recall any serious delay caused to the general contractor by the drawings prepared in our office.

Q. 341. Is it the general thing to make a certain amount of corrections in drawings as you go along?

A. Yes; there are alterations in nearly all building construction.

Q. 342. Now, with reference to the reinforcing steel, was there any controversy, that you can recall, with reference to cleaning this reinforcing steel?

A. Well, there was constant complaint, both of myself and my assistant.

Q. 343. Will you describe exactly what you mean by cleaning reinforcing steel?

A. Well, in pouring columns, the reinforcing projects 2 or 3 feet above the column and passed the floor slab, and in pouring the columns, naturally, the steel is covered with grouting, and that has to be cleaned off and they should be cleaned off before those rods are buried in the column above.

852 Q. 344. Why?

A. Because you don't get a bond, customarily; and the steel was also thrown down into the clay, into the mud around the building during the rainy periods, when naturally it would have to be cleaned.

Q. 345. And supposing it is excessively rusty?

A. That should be cleaned, too, and a great deal of it was.

Q. 346. Can you oil it.

A. No, sir.

Q. 347. Do you know whether that was done?

A. I beg pardon?

Q. 348. Do you know whether that was done on this job?

A. I am not sure. I can't say. It should not be done.

Q. 349. How did that controversy finally work out, with regard to cleaning the reinforcing steel; what happened?

A. Well, they cleaned it after a fashion.

Q. 350. Would that have anything to do with the faulty concrete that later on developed, according to those photographs?

A. No; it wouldn't have anything whatever to do with that.

Q. 351. What would be the effect then of a poor bond, as you term it, with the concrete that is poured around it?

A. Around a dirty bar?

Q. 352. Yes.

A. Well, the concrete wouldn't adhere to the steel.

Q. 353. It wouldn't adhere to the steel? You say that would weaken the column?

853 A. Yes; it certainly would weaken the column or weaken the floor slab, if it is thoroughly bedded in the concrete and surrounded by dirt.

Q. 354. After concrete has been poured around a dirty reinforcing steel bar, you can't very well tell, can you?

A. There is no way to tell.

Q. 355. There is no way to tell?

A. No.

Q. 356. Might it show up in later years, when it might show weakness?

A. It might; yes. Therefore, we take the precaution of cleaning it before placing the concrete.

Q. 357. Do the specifications state that the steel shall be cleaned?

A. Yes, sir.

Q. 358. I hand you a paper marked "Plaintiff's Exhibit 46-A." You will notice that, during January, 1934, the plaintiff earned \$14,480.42; in February, it was \$14,631.28; and in March, \$32,200. Now, the total amount of this is \$61,311.70. During the months of January, February, and March, the plaintiff earned \$61,311.70; is that correct?

A. Yes, sir.

Q. 359. The total amount of his contract was \$1,228,428.68. Just taking a glance at that, can you tell me about what percent of the entire work was finished?

A. Well, about 9 percent.

Q. 360. 9 percent?

A. Yes.

854 Q. 372. Captain Feltham, do you recall how this work was conducted? Were all of the buildings kept abreast of one another, or did they follow?

A. Well, you might say they followed each other. Sometimes they were working on 3 or 4 at a time.

Q. 373. Do you remember when they started the last building?

A. Building No. 6 I think was the last.

Q. 374. I hand you a group of photographs; will you tell me what they are, please?

A. They are photographs of Building No. 6.

Q. 375. Do they bear your signature?

A. Known as the continuous treatment building.

Q. 376. Do they bear your signature?

A. No, sir; they do not all bear my signature.

Q. 377. Are you able to tell, from the information on them, whether or not they were taken on this job for this particular work for the Government?

A. Yes, sir; they were progress photographs.

Q. 378. Now, can you tell, from that group of photographs, just when the work was begun on Building 6?

A. I can't give the exact date.

Q. 379. Can you say what month they began there?

A. About April 1, around about March or April.

Q. 380. What were they doing—this photograph was taken April 30, this one here?

855 A. Yes, sir.

Q. 381. What were they doing on April 30?

A. The general grading had been completed and they were now laying out for excavations for the footings for the piers.

Q. 382. Had any footings been poured?

A. No.

Q. 383. Will you tell me when the footings were poured?

A. The footings were poured sometime in the latter part of May.

Mr. JULICHER. I offer this group of photographs as Defendant's Exhibit N.

Mr. KILPATRICK. No objection.

The COMMISSIONER. They will be so received and marked by the reporter as "Defendant's Exhibit N."

(Said photographs, so offered and received in evidence, were marked, "Defendant's Exhibit N," and made a part of this record).

By Mr. JULICHER:

Q. 384. Captain Feltham, do you have any records by which you could refresh your recollection and testify or trace the progress of Building No. 6?

A. Yes, sir.

Q. 385. Would you refresh your recollection—bring out your records and tell me when the building was started, when the work on the building was started?

856 A. The excavation for Building No. 6 was started on April 12, 1934.

Q. 386. Where is this information you are giving now taken from?

A. Taken from the daily log.

Q. 387. All right; continue.

A. On April 30, the excavation was completed. On April 11, the first concrete was poured. On May 1, they were still excavating for the footings and constructing forms. On May 1, some of these footings were installed. On May 7, there was no form lumber for this building.

Q. 388. Now, at this point, let me ask you this question: Up to this time, was there anything that the mechanical contractor could do on the job?

A. No; nothing.

Q. 389. All right; continue.

A. On that same date, there was no form lumber for Buildings 5, 7, and 15. They were out of material for constructing the forms. On May 8, there was no form lumber. On May 10, there was no form lumber, neither for Buildings 6, 16, and 18. On May 11, there was no form lumber; also no form lumber for Buildings 5 and 18. On May 15, there was no form lumber for Buildings 6 and 15. On May 18, no lumber for Building 6. On May 19, no form lumber for Building 6. On May 21, no form lumber for Building 6. On May 22, no form lumber for 6 or 5.

Q. 390. Well, now, let's let that go and go all the way down to June 16. Was there any form lumber on June 16?

857 A. No, sir.

Q. 391. What happened on June 23; do you have a record of it?

A. Yes, sir; we were erecting columns and beam forms for the first floor.

Q. 392. Erecting columns and beams for the first floor?

A. Yes, sir; the forms.

Q. 393. Was there anything the heating contractor could do at that time?

A. Yes, sir; it was possible for the sleeves to be installed.

Q. 394. Who located the sleeves for the contractor, for the heating contractor?

A. The heating contractor, himself, located them.

Q. 395. What did the general contractor have to do with them?

A. Placed them.

Q. 396. He placed the sleeves?

A. They are laid out—the work is laid out by the heating and plumbing contractor and the sleeves are indicated on the forms,

where they are to be located; and they are to be erected by the general contractor at those places.

Q. 397. Well, could one man take care of a building, say?

A. It depends entirely on the size.

Q. 398. Well, one of these buildings that we are talking about now?

A. Yes; one man, with possibly a helper or laborer.

Q. 399. On June 22, was there any form lumber for Building 6?

A. There was no form lumber for Building 6.

858 Q. 400. Will you continue, now, on June 23?

A. They were erecting columns and beam forms for the first floor.

Q. 401. The 25th?

A. Working on forms and columns.

Q. 402. What happened on September 2? How far along was the building on that date?

A. Finished pouring the concrete roof slab on September 2.

Q. 403. When did they finish the brickwork?

A. October 13 the brickwork was completed.

Q. 404. Now, when the brickwork is completed, what is left to be done?

A. Well, the interior of the building.

Q. 405. You mean the building is just a shell then; there is nothing inside of it?

A. No; they are working along as they go, installing some partitions, but no plastering or painting is executed until the roof is completed or made waterproof, at least.

Q. 406. What does that say on October 20?

A. Well, on October 20, there was no hollow tile for the partitions for this building delivered on the site.

Q. 407. October 20?

A. Yes; October 22, I should have said. The roof framing was completed on the 20th.

Q. 408. Completed or not completed?

A. It wasn't completed, on October 20.

859 Q. 409. Now, on December 2, what stage of completion was the building in?

A. December 2?

Q. 410. Or December 4, rather?

A. They completed the plastering in the interior of the building on December 4.

Q. 411. Now, Captain Feltham, considering when this building was started, in your opinion would it have been possible to finish this particular building by November 1?

A. No, sir; not with the ordinary methods employed by the contractor.

Q. 412. Was there any reason that you know of why the contractor could not have started this building before that time?

A. No reason whatever; sir.

Q. 413. Did the Redmon Heating Company delay this building in any way?

A. No, sir; the Redmon Heating & Plumbing Company were out of the picture by that time.

Mr. JULICHER. Your Honor, we have here progress photographs relating to all of the buildings, taken about the same date that they were for Building 6 already admitted, and we would like to offer these in evidence for the convenience and information of the Court.

The COMMISSIONER. I will receive them. Is there any objection, Mr. Kilpatrick?

860 Mr. KILPATRICK. No, sir. Mr. Julicher says they are progress photographs and we are satisfied.

The COMMISSIONER. They will be marked by the reporter and received in evidence.

(Said progress photographs, so offered and received in evidence, were marked, "Defendant's Exhibit O," and made a part of this record.)

* * * * *

By Mr. JULICHER:

Q. 419. Do you recall whether or not the contractor always had sufficient material on the job, so that there would be no delay?

A. State that again, please, sir?

(Thereupon, the reporter read the pending question.)

The WITNESS. No; he did not have sufficient material on the job, particularly in securing form lumber.

By Mr. JULICHER:

Q. 420. Did he suffer any lengthy delays, because of the lack of material?

A. That couldn't be avoided.

The COMMISSIONER. The question was, did he suffer any delay?

861 Mr. JULICHER. Yes.

By the COMMISSIONER:

Q. 421. He did or he didn't?

A. Yes, sir.

* * * * *

Mr. JULICHER. Before this goes any further, your Honor, I want to object, if Captain Feltham is expected to interpret that ruling.

The COMMISSIONER. No; I think he is only giving his idea of the classification, which would have direct application, perhaps, to

the basis of skill; that is to say, the controversy, as I understand it, is between the different scale of pay and the different qualifications of labor; and having been inspector on the job, and having to do with that job, he is now being interrogated as to how he applies those rules to the particular job in hand. So I think it is not calling for his interpretation of them, particularly, but only what he did do down in Roanoke. That is my understanding of it.

Mr. KILPATRICK. Yes; the point I was making was, Captain Feltham's view, as I understood it, was that, if a carpenter is competent to perform skilled work, even though you used him on work normally required of a semi-skilled craftsman, you still have to pay him \$1.10 an hour.

862 Q. 422. Captain Feltham, do you recall a controversy regarding temperature steel?

A. Yes, sir.

Q. 423. Will you state what that involved?

A. Well, that involved placing temperature steel at the top of the slab in Building 15, as I recall it.

Q. 424. Did the plaintiff object to doing that?

A. Yes, sir.

Q. 425. Do you know whether or not their temperature steel was included in the contract?

A. Yes; it is so indicated in a note.

Q. 426. I show you the plan; can you point out the paragraph?

A. Section 3, which distinctly calls for temperature steel in the flat slab.

By Mr. KILPATRICK:

Q. 427. Section 3 of what?

863 A. Section 3 of the blueprint 226, a general note.

By Mr. JULICHER:

Q. 428. Now, how did this controversy arise; can you tell us that?

A. The contractor didn't think it was necessary to put it in and proposed omitting it. However, according to the plans and specifications, it was required.

Q. 429. And he put it in?

A. It was installed; yes.

Q. 430. Do you know whether or not he attempted to collect an additional amount?

A. Yes; he did.

Q. 431. And you say it was supposed to be included in his original bid, because it is in this plan?

A. Certainly, it distinctly calls for it.

Mr. JULICHER. At this time, I would like to offer this plan in evidence.

The COMMISSIONER. It will be so received and marked, subject to correction.

(Said blueprint, so offered and received in evidence, was marked, "Defendant's Exhibit P," and made a part of this record.)

864 By Mr. JULICHER:

Q. 433. Captain Feltham, I show you a group of letters, apparently signed by you, addressed to Algernon Blair; will you just glance through them and see if you wrote them, please?

A. Yes; these letters were signed by me.

Mr. JULICHER. I offer these in evidence as Defendant's Exhibit

Q.

Mr. KILPATRICK. No objection, with the same understanding.

The COMMISSIONER. They will be received and marked by the reporter.

(Said group of letters, so offered and received in evidence, was marked, "Defendant's Exhibit Q," and made a part of this record.)

By Mr. JULICHER:

Q. 434. Captain Feltham, will you tell me the difference between rough grading and finished grading?

A. Well rough grading is merely what grading is left from the operation of the grading machine, and finished grading is usually hand raking.

Q. 435. Would you say the finished grading was just before you planted the grass?

A. Yes.

Q. 436. Would you say the rough grading would necessarily be large cuts and fills?

A. Oh, yes.

Q. 437. Did you have many large cuts on this job?

A. Quite a lot, yes; on top of the hill, practically the entire top of the hill was removed.

865 Q. 438. What did you do with that material?

A. It was just dumped outside of the building site.

Q. 439. Did you fill in any ravines or gullies?

A. Yes; near the grading area there was quite a pond after a heavy rain, which was filled in by boulders and clay from the excavation.

Q. 440. Now, that type of grading is done immediately upon entering the job, would you say?

A. It should start, yes; immediately, the first thing to be done.

Q. 441. As distinguished from the finished grading, which is done last?

A. After the completion of the building, yes; or about that time.

Q. 442. Do you recall whether or not any material was rejected, because it didn't come up to the specification requirements?

A. Yes, sir.

Q. 443. Can you think of any specific instance, at this time?

A. Well, there was some brick and some tile.

Q. 444. Why was the brick rejected?

A. Well, it didn't come up to the sample submitted and approved by the Central Office, and the tile came there very dirty and was rejected. However, from the testimony I have heard in the case, it was brought back and used, after being rejected.

Q. 445. After being rejected, it was brought back and used?

866 A. Yes; it was rejected and removed from the site, and the manufacturer's own testimony says it was used on the job. I don't know.

Q. 446. Do you know why it was rejected?

A. On account of being warped and dirty and couldn't be used in that particular place.

Q. 447. Do you recall the incident of wetting down the brick?

A. Yes, sir.

Q. 448. How did that come about?

A. The specifications required us to wet the brick.

Q. 449. For what purpose?

A. For the purpose of making the mortar adhere to the brick.

Q. 450. About how wet would you say the brick should be?

A. Just good and moist. You can't lay brick after they are wet too much.

Q. 451. Can you wet them too much?

A. Yes, sir.

Q. 452. Cause them to slide?

A. Yes, sir.

Q. 453. Did you have much trouble on this job with reference to that?

A. Well, that was a continuous worry on the part of both myself and my assistant, in keeping the brick wet according to the specification requirements.

Q. 454. Do you remember the matter of scaffolding on this job?

867 A. Yes, sir.

Q. 455. Do you recall how the plaintiff first offered to lay this brick?

A. Yes, he was going to lay it overhand; that is, stand the mason on the inside of the building and reach over the wall to lay up the brick.

Q. 456. You say that is laying the brick inside, from the inside of the scaffold?

A. Yes, sir.

Q. 457. Would you say cantilever scaffold was an inside scaffold?

A. No, indeed; it is a hanging scaffold.

Q. 458. Where would the brick mason stand when laying brick from a cantilever scaffold?

A. Stand on the scaffold, but on the outside of the building.

Q. 459. How would that cantilever scaffold be erected?

A. Well, it is merely anchored back in the building, so it won't tilt over with the weight of the material and the men. Sometimes it is anchored to the floor on which it is laid. Sometimes it is based around the top of the cantilever timber to the floor above, a piece of 2 x 4 or 2 x 6.

Q. 460. Did you ever object to the method the plaintiff elected to use in laying this brick?

A. No; I never objected to it. It made no difference to me what scaffold he used. It was the results we were after.

868 Q. 461. Did you ever say anything to him?

A. I told him I didn't think he would be able to lay up the brick, that is, which has a homewood joint in the center, with an inside scaffold.

Q. 462. What did you base your conclusion on?

A. In my experience, in seeing the brick work erected, and knowing the type of brick that we had, and the joint, that you were required to have that brick and then a small homewood joint, which is an indentation in the center of the mortar joint, it was absolutely impossible for a man to lean over a wall 2 or 3 feet to strike that joint properly and straight, because it had to be struck according to the specifications and scratched perfectly horizontally and vertically, and could not be allowed to go in a wavy joint.

Q. 463. Would the spandrel beams interfere in any way, from the inside?

A. No.

Q. 464. Could he lay bricks over the face of the spandrel beam, from the inside?

A. No.

Q. 465. He couldn't?

A. He couldn't, no; he couldn't reach far enough down. He would have to have a scaffold to install his brick wing over his

spandrel beam on the outside. There are various types of scaffolds. There is the Spanish scaffold, which is hung from the top of the building with a wire cable, and it is wound up to any elevation they want it, from the ground to the roof; and there is another type of scaffold, which is projected out of the windows, and then there is the cantilever type of scaffold. They are the various types of scaffolds that are used for outside brickwork.

Q. 466. Did you, at any time, order the plaintiff to erect an outside scaffold?

A. I did not; no sir. I was after results.

Q. 467. Pardon me?

A. I was after results and endeavoring to get a good grade of brick work.

Q. 468. It didn't make any difference to you how he laid the brick, so long as he complied with the specifications?

A. Not a particle. We had nothing to do with that. We had no jurisdiction over building the scaffold, except to see that it was erected so that accidents would — happen.

Q. 469. Do you remember Mr. Phipps?

A. Yes, sir.

Q. 470. Who worked for the plaintiff?

A. Yes, sir.

Q. 471. He was a brick man, wasn't he?

A. He was a bricklayer, yes; by trade.

Q. 472. Was he on the job at all times?

A. I don't recall whether he was there through the entire job, or not, but I think he was most of the time, but not on all of the buildings.

870 Q. 473. I have a sketch here that purports to illustrate the difficulty encountered by laying brick from the inside.

A. Yes; I think that illustrates it very nicely. Not all of the brick could have been laid from the inside.

Q. 474. Will you explain why you make that statement with reference to the two men, as shown on this drawing?

A. From an inside scaffold, you can only go up to within 18 inches of the under side of the spandrel beam. Now, you have a spandrel beam 36 inches in depth, and even if a man laid prone on top of the slab, he couldn't reach out far enough to continue this brickwork up. It is impossible to do that brickwork at that particular point from the inside.

Q. 475. It had to be done from the outside?

A. It had to be done from the outside.

Q. 476. Whether it was by any one of the three outside methods?

A. Yes; about 26 inches is about as much as a man can reach down, and he has to have a long arm. But if you have a 36-inch beam, this man cannot work up on the inside of the beam, because he has to get his head and shoulders under the beam to get to this part of the wall.

Mr. JULICHER. I would like to offer this in evidence for whatever it may be worth.

The COMMISSIONER. Is there any objection, Mr. Kilpatrick?

Mr. KILPATRICK. No; just as an illustration, although I do not know who the artist is.

871 The COMMISSIONER. I will receive it for what it is worth, as an example of laying brick from inside of the spandrel beam. You may mark it "Defendant's Exhibit R."

(Said sketch, so offered and received in evidence, was marked, "Defendant's Exhibit-R," and made a part of this record.)

By Mr. JULICHER:

Q. 477. Captain Feltham, will you explain what is meant by Flemish bond?

A. Well, Flemish bond is known in some localities as Old English bond, and is very extensively used in England in building walls. It is also known as garden wall bond. If you read up on brickwork, you will see if I am right. Flemish bond, as we term it, is stretching this brickwork the long way in the wall, then an alternate brick between those stretched bricks, which has a header which extends back through into the wall and ties the wall together.

By the COMMISSIONER:

Q. 478. In other words, it is the long dimension of the brick and the short dimension of a brick and then a long alternative?

A. Yes, sir.

By Mr. JULICHER:

Q. 479. And then the header goes back through the wall?

A. Well, the header course usually runs back through. Of course, when you get your header over a spandrel beam, you have to cut your brick in half, because there is only 4 inches of brickwork from the face of the brickwork to the outside of the wall.

872 Q. 480. Is that the type of bond that was used on these buildings?

A. Yes, sir.

Q. 481. Captain Feltham, there is testimony to the effect that you and Mr. Roberts were close friends before this work started?

A. Well, I won't say very close friends. We never carried on any correspondence, or anything of that kind. Mr. Roberts

was superintendent for Mr. Blair on one job that I had charge of in Atlanta, Georgia, and we got along fairly well. On one or two occasions we disagreed. For instance, one of the corner columns of a building, when the forms were removed, fell to pieces, due to the fact that there was no cement in the concrete. That, of course, was an accident, not intentional. The other occasion we disagreed, I think, was on some paving.

Q. 482. That was previous to this Roanoke job?

A. Yes; this was in 1928. We were putting down some paving, and the specifications called for it to be rolled with a 10-ton roller.

Mr. KILPATRICK. Your Honor please, we would like not to go into such details.

The WITNESS. Well, you were asking me about this friendship.

The COMMISSIONER. I believe it is competent testimony. It is a little far afield, but may show some relationship or lack of relationship.

Mr. JULICHER. I go into it only because it was raised previously.

873 The COMMISSIONER. I understood that was the purpose, to rebut, perhaps, some of the presumptions that may have been suggested by the other testimony.

By Mr. JULICHER:

Q. 483. Will you continue, Captain Feltham, please?

A. I think possibly \$300 or \$400 worth of concrete had been installed, despite the fact that the ground had not been rolled with a 10-ton roller, which was specified in the specifications. So Mr. Roberts flew into somewhat of a rage, but, however, removed the concrete and rolled it according to the specification requirements. Outside of that, I don't think Mr. Roberts had any falling out; to amount to anything. We had some little differences.

Q. 484. You are talking about previous to the Roanoke job?

A. That is previous to the Roanoke job; yes.

Q. 485. Now, on the Roanoke job, the record shows you wrote a letter congratulating the Blair Company on having obtained the contract and requesting that Mr. Roberts be assigned to this job?

A. I did.

Q. 486. Is that true?

A. Yes, sir.

Q. 487. What happened subsequent to that? Well, I don't imagine you are bitter enemies, but you don't feel the same about him?

Mr. KILPATRICK. Suppose you ask him, Mr. Julicher.

By Mr. JULICHER:

Q. 488. Would you have requested that he be assigned to a job of yours any more?

874 A. Certainly not.

Q. 489. Why not?

A. After my last experience at Roanoke, upon which he was general superintendent, on account of a controversy that came up two or three times a day on every little item in connection with the job.

Q. 490. Was he attempting to get around the specifications?

A. No; I think—I don't know. He was offering a lot of substitutes and trying to get the work—of course, which is perfectly natural—to get the work executed as cheaply as possible for his employer, but you can't blame him for that.

Q. 491. You don't mean he was trying to give you a cheap job?

A. Yes; I do. It is either that or it was due to the ignorance on the part of his foreman and incompetent employees, and there was quite a lot of that.

Q. 492. Can you cite any other difficulties that you had?

A. No, no.

Q. 493. It was only with regard to the job?

A. That is all. We were always very pleasant.

Q. 494. No personal falling out?

A. Not a thing in the world, nothing personal.

Q. 495. Captain Feltham, do you recall the incident of the telephone wire the Government wanted to string on poles erected by Blair?

A. Yes, sir.

Q. 496. Will you explain what happened, please?

875 A. Well, the contractor had erected poles, I think 5 in number, from the main highway to his office, spaced about 300 feet apart, or 250 feet apart, and we, having to have a telephone in our construction office, asked permission to string two wires on the poles, and we were informed by letter that, if we did, it would cost the Government \$150 for the use of the 5 poles during the life of the contract, as rental. However, we cut some trees on the reservation and put our own lines in.

Q. 497. Put up your own poles?

A. Yes, sir.

Q. 498. Did they indicate why they wanted to charge the Government for the use of those poles?

A. No, sir; it was put in the form of a proposal, and I sent it to Washington with the recommendation that it be rejected. We had some men there clear it up and build it.

Q. 499. Going back to the brickwork again, do you know whether the specifications provided the method by which bricks were to be laid?

A. Oh, yes; always. They were to be laid level, true and plumb, and the joints were filled with mortar and brought to the proper bearing. You will find that in all Government specifications; that is standard.

Q. 500. I asked you that question because, Mr. Blair, on pages 99 and 100, stated that the specifications do not set out how the bricks were to be made.

A. Who made that statement?

Q. 501. Mr. Blair.

876 A. He probably isn't familiar with the specifications, because they distinctly call for how they shall be laid.

Q. 502. Captain Feltham, do you recall a controversy with the plaintiff contractor regarding the wage to be paid skilled and unskilled labor?

A. Well, it started, I think, the day the contractor came on the site. The contractor was required to secure all of his help through the Reemployment Agency in the city of Roanoke. However, he could elect to contract with the various unions for their skilled labor. The specifications called for a minimum wage of 45 cents per hour for laborers and \$1.10 an hour for mechanics.

Q. 503. Was there any intermediate labor allowed?

A. Yes, there was no objection to it, which shows on nearly every pay roll of the contractor.

Q. 504. Do the pay rolls show, if you know, whether there were intermediate laborers used at 60 cents, 70 cents or 80 cents an hour?

A. Yes, 75 cents and 50 cents.

Q. 505. To what type of labor were those amounts paid?

A. Well, chauffeurs and skilled laborers and to apprentices on the job.

Q. 506. I show you a document here. Do you remember receiving that letter from the Algernon Blair Company?

A. Yes, sir.

Q. 507. Dated February 7, 1935?

A. Yes, sir.

Q. 508. To which were attached certain pay rolls?

877 A. Weekly payrolls, yes.

Q. 509. Now, looking at those weekly pay rolls, do you see where there was any intermediate pay rate other than 45 cents for unskilled and \$1.10 for skilled labor paid to the men?

A. Yes, sir; I notice here on January 24, 1935, there were 2 apprentice painters paid a wage scale of 55 cents per hour. That was a subcontractor. On February 14, 1935, there is 1 laborer paid

60 cents an hour and 3 more laborers paid 50 cents an hour; and on the same date, 2 more laborers paid 50 cents an hour, and on the same date, 2 additional at 50 cents an hour.

Mr. JULICHER. I would like to offer this in evidence as showing that the plaintiff's own pay rolls carried the names of workers who did not receive 45 cents an hour or \$1.10 an hour, namely, an intermediate wage scale.

Mr. KILPATRICK. We object, because that is not an issue in this case. * * *

The COMMISSIONER. * * * I will receive it, subject to your objection, and grant you an exception.

(Said letter dated February 7, 1935, from Blair to Feltham, so offered and received in evidence, was marked, "Defendant's Exhibit S," and made a part of this record.)

878 By Mr. JULICHER:

Q. 510. Getting back to the temperature steel item for a moment, I hand you three letters, one from C. W. Roberts, addressed to you; one from you to Blair, the contractor; and one from you to the Director of Construction. Can you identify those letters and tell me whether or not you signed and received those letters?

A. Yes, sir.

Q. 511. Will you just look at them and tell me what the occasion for them was?

A. Well, the contractor took exceptions as to the drawings prepared by Central Office and did not seem to think they required temperature steel installed in the floors of these buildings.

The WITNESS. The drawings call for temperature steel in the floor slab of Building No. 15. That is stated on a note on the blueprint, the third paragraph, and it is presumed that the contractor, in taking off his quantities for the work and preparing his estimate—that this was taken into consideration, and it did distinctly call for temperature steel in that slab, and I insisted upon the contractor installing it. He did, then submitted a proposal for the extra cost of installing the steel called for in the note on the blueprint.

By Mr. JULICHER:

Q. 515. Do you identify these letters?

879 A. Yes, sir.

Mr. JULICHER. I offer these as Defendant's Exhibit T.

Mr. KILPATRICK. We have no objection.

The COMMISSIONER. Without objection, they will be received and marked by the reporter.

(Said letters, so offered and received in evidence, were marked, "Defendant's Exhibit T," and made a part of this record.)

Mr. KILPATRICK. May I state, for the Commissioner's convenience, that the plaintiff put in some additional correspondence on the same subject of temperature steel, which is Plaintiff's Exhibit 101 and should be read in connection with these letters just put in.

The COMMISSIONER. What is the number of that exhibit?

Mr. KILPATRICK. Exhibit 101.

By Mr. JULICHER:

Q. 516. Captain Feltham, do you recall a controversy regarding the structural steel, the men who set the structural steel?

A. Yes, sir; the contractor was paying rodmen 60 cents an hour. I contended that it required skilled labor to perform this work. To convince myself that I was right, I took the matter up with the Department of Labor and their reply was, that it was skilled labor and they should be paid \$1.10 per hour. There is a letter in the file to that effect.

By the COMMISSIONER:

Q. 517. A letter from you to—

A. A letter from the Department of Labor to me; sir. I notified the contractor of this fact, quoting the letter. The contractor immediately paid the men back salaries due them, and put the men on the pay roll as mechanics at \$1.10 an hour.

By Mr. JULICHER:

Q. 530. I hand you two letters that appear to have been signed by you; can you identify them?

A. Yes, sir; they were signed by me.

Mr. JULICHER. I offer these two letters in evidence as Defendant's Exhibit U.

Mr. KILPATRICK. No objection.

The COMMISSIONER. They will be received and marked by the reporter as "Defendant's Exhibit U."

(Said two letters, so offered and received in evidence, were marked, "Defendant's Exhibit U," and made a part of this record.)

By Mr. JULICHER:

Q. 531. Do you recall the occasion for that top letter of October 29, 1934?

A. Yes, sir; the contractor's attention had been invited repeatedly to violations of the contract in not paying this man more than 70 cents an hour, when he was doing skilled mechanical work.

Q. 532. This is the same Moore, isn't it, that we were previously talking about?

A. Yes; J. J. Moore.

881 Q. 533. You said before he was listed on the rolls as a laborer; is that true?

A. Yes, as I recall it, he was always listed as a laborer.

Q. 534. And he was receiving 70 cents an hour?

A. Yes, sir.

Q. 535. And he was also a "key" man?

A. A "key" man; yes, sir.

Q. 536. And what was the occasion for your letter dated November 2, 1934?

A. You see, according to the contractor's contract requirements, all employes should be carried through and vouched for by the Reemployment Service in Roanoke, Virginia; and each week a copy of the contractor's pay roll was sent to him, asking if the men on this pay roll have been cleared through his office, so that we would have a complete record that the contractor was complying with the terms of his contract. So each week the pay roll was sent to the employment office and the men's names checked by that office, and reporting the matter back to us. And on this occasion, there is quite a number of men here that were working for subcontractors and were not cleared through the Reemployment Bureau. That occurred numerous times. You see, that was the only way it was possible for us to check the employes, was to check them against the pay rolls submitted by the contractor.

Q. 537. I hand you a group of four letters, and ask you to identify them and tell me whether or not you signed them?

A. Yes; I signed those letters.

Mr. JULICHER. I offer these four letters as Defendant's Exhibit V.

882 The COMMISSIONER. They will be so marked and received as "Defendant's Exhibit V."

(Said four letters, so offered and received in evidence, were marked, "Defendant's Exhibit V," and made a part of this record.)

By Mr. JULICHER:

Q. 538. Will you look at this letter of July 10, included in the group of letters marked as "Defendant's Exhibit V," and refresh your recollection, and tell me what was the occasion for that letter?

A. The occasion for this letter was due to the fact that common labor was performing duties of skilled mechanics, that is, carpenters.

Q. 539. You say performing duties of skilled mechanics, carpenters?

A. Skilled carpenters; yes. The contractor's attention was also invited to the fact that he had been notified, prior to this date. That was on June 21 and 22.

Q. 540. Did apprentices receive salaries of skilled mechanics?

A. No.

Q. 541. Do you know what type of work the apprentices did?

A. Well, they are merely helpers to the carpenters, men that haven't learned their trades sufficiently to perform skilled work.

Q. 542. Do you know whether there were any apprentices on this job, carpenters' apprentices?

A. There were some apprentice carpenters and painters on the job, yes, which is so indicated on the contractor's pay roll.

Q. 543. Do you recall what these apprentices were paid?

883 A. I have a note here, taken from the contractor's pay roll dated January 24, 1935. There were two men paid at the rate of 55 cents per hour, apprentice painters.

Q. 544. Apprentice painters? I am talking about apprentice carpenters.

A. I don't recall. I would have to refer to the pay roll.

Q. 545. Do you know whether it was less than \$1.10 an hour?

A. Oh, yes, sir.

Q. 546. I hand you a group of letters and ask you to identify them, and tell us whether or not you signed them.

A. Yes, sir.

Mr. JULICHER. I offer them in evidence as Defendant's Exhibit W.

The COMMISSIONER. Without objection, they will be received as Defendant's Exhibit W.

(Said group of letters, so offered and received in evidence, were marked, "Defendant's Exhibit W," and made a part of this record.)

884 Mr. JULICHER. I offer this photograph, introduced solely for the purpose of showing the cantilever scaffold used by the Northeastern Construction Company, of Winston-Salem, North Carolina, in constructing one of the buildings later added to the facility at Roanoke, Virginia.

The COMMISSIONER. Without objection, it will be received and marked as "Defendant's Exhibit Y."

(Said photograph showing cantilever scaffold; so offered and received in evidence, was marked "Defendant's Exhibit Y," and made a part of this record.)

Q. 586. Captain Feltham, do you recall Messrs. Andrews and Ellingsworth on this job?

A. Yes, sir.

Q. 587. Do you remember what Mr. Andrews did, while he was on that job?

A. Well, part of the time, he was going from Roanoke to Washington. The rest of the time he was down there working out the hardware, when it was received on the job.

Q. 588. For the plaintiffs?

A. Yes, sir.

Q. 589. Do you know why he was traveling between Roanoke and Washington?

A. Well, I think he was a sort of liaison officer between 885 the field or the contractor and Central Office.

Q. 590. And do you recall Mr. Ellingsworth?

A. Yes; I remember Mr. Ellingsworth being on the job, but I had very little contact with him.

Q. 591. Do you know what he did?

A. He was there the early part of the life of the contract, investigating the stone and designing and getting out the drawings for the quarry men to work by, giving the sizes and so on, which is usually done.

Q. 592. Was he also traveling between Washington and Roanoke?

A. He probably did make 2 or 3 trips, I am not sure.

Q. 593. I hand you a group of letters. Will you look them over and see if you signed them, please?

A. All of these letters were signed by me, and attached is a copy of the schedule of pouring of concrete submitted by the contractor for the week beginning May 7, 1934.

Q. 594. And it is signed by whom?

A. Signed by C. W. Roberts, superintendent.

Mr. JULICHER. I offer these letters as Defendant's Exhibit Z.

Mr. KILPATRICK. We have no objection.

The COMMISSIONER. Received and marked as "Defendant's Exhibit Z."

(Said letters and schedule of concrete, so offered and received in evidence, was marked "Defendant's Exhibit Z," and made a part of this record.)

886 By Mr. JULICHER:

Q. 595 I hand you a group of letters and ask you to identify them?

A. Yes, sir; I signed those letters.

Mr. JULICHER. I offer these letters in evidence as Defendant's Exhibit AA.

Mr. KILPATRICK. No objection.

The COMMISSIONER. So received and marked.

(Said letters, so offered and received in evidence, were marked, "Defendant's Exhibit AA," and made a part of this record.)

Mr. JULICHER. No exception.

By Mr. JULICHER:

Q. 602. Do you remember Mr. W. M. Berryman?

A. Yes, sir.

Q. 603. By whom was he employed, if you know?

A. He was employed by Algernon Blair.

Q. 610. Did you have occasion to say anything to him regarding these buildings?

The WITNESS. I said nothing to Mr. Berryman, except in connection with the errors that had been made in the buildings under his supervision.

By Mr. JULICHER:

Q. 613. Did he have charge of certain brick work; is that what he was charged with?

A. He was a carpenter foreman and had general supervision over the buildings, this group of buildings.

Q. 614. Did you have occasion to point out any defects in his work?

A. Quite a number of minor defects, and some were right serious?

Q. 615. How did he take your corrections?

A. Very nicely.

Q. 616. Did you ever have any difficulty with him?

A. Not a particle, as I recall.

Q. 617. Captain Feltham, do you recall certain arguments with reference to certain brick work that was of a special mold?

A. Yes, sir.

Q. 618. Do you recall whether or not that was late in the evening, or when it was?

A. Yes, sir.

Q. 619. What happened?

A. The first course on the outside of the brick work was known as, "bull-nose" brick, that is, on-half around on the two
888 edges of the brick. The contractor was delayed in securing delivery of his brick, and wished to proceed with the brick work by grinding a square brick into the shape on the detail drawings. I realized that couldn't be done in a satisfactory manner. In the first place, he would ruin the texture of the

brick by grinding with an emery wheel, and weaken the brick to a considerable extent, and I objected to the grinding. However, I think Mr. Gardner, the manufacturer of the brick, and a representative of the contractor visited Washington and took it up with my superiors, and I was overruled. The contractor was allowed to grind the brick, against the advice of the inspector, on account of losing the texture of the brick. That brick was a very rough face brick, and by grinding it, it made it smooth. After his representative returned to Roanoke, he endeavored to grind this brick, and found the cost of grinding each brick was anywhere from 10 to 15 cents apiece, and they then decided it was a very expensive operation, and Mr. Clark came to my office with a proposition. Why he came to my office, I don't know, because he had gone over my head previously, to get permission to grind the brick and I refused. His proposition was to install, in place of the first course of the brick, a piece of 2 x 4 timber, starting the second course on top of the timber, proposing that, when the bull-nose arrived from the yard, to remove the timber and insert the brick, which would be a most difficult proposition to make it absolutely watertight. This I objected to, and informed Mr. Clark, using considerable profanity—

889

By the COMMISSIONER:

Q. 620. You mean on your part?

A. Yes; on my part, which is in the record; that he had gotten permission to grind the brick and to grind them; that if I could, I wouldn't give permission to install the timbers in the brick wall, particularly on the first course.

Q. 621. In other words, you had no authority to do that?

A. I had no authority; and in the second place, I didn't desire it, because it wasn't good construction. I was very much surprised at Mr. Clark, being an engineer, would even suggest such a thing. The contractor was delayed some time in securing the necessary brick for this work.

Q. 622. The so-called bull nose?

A. The bull nose; yes, sir.

By Mr. JULICHER:

Q. 623. Captain Feltham, do you recall whether or not the plaintiff filed claims in the matter of delays or disputes, as provided for in the contract under paragraph 9?

A. No, sir; they did not.

Q. 624. Do you recall whether or not the plaintiff went over your head, as you previously said, on many occasions?

A. Quite a number of occasions, yes, sir; and my decision was sustained in many instances by Central Office.

Q. 625. In some instances, as in the matter of this grinding of brick, you were overruled; is that not true?

890 A. Yes, sir.

Q. 626. But you have stated that you know of no instances when the plaintiff has filed a claim for delay or other dispute, in compliance with paragraph 9 of the contract?

A. No.

Q. 627. Was there any dispute that you remember, with regard to the columns in front of the building—I think it was the main building, or was it the recreation building—something about them being off line?

A. Oh, yes; I recall that very distinctly. It wasn't the recreation building, it was building No. 7, where the contractor elected to reduce the concrete wall supporting the building 1 inch, to enable him to use thicker stone up to the base course, first floor elevation. In doing this, it reduced the width of the column 1 inch. That was done with no reference to us or Central Office; we happened to discover it, and I immediately stopped—gave written notice to the contractor to discontinue and not pour, because he was cutting down the columns $\frac{1}{12}$ of their width, the 12-inch columns, and the 14-inch columns in proportion. This action was taken by the contractor without even consulting Washington or myself or my assistant. The work was discontinued and I immediately reported it to Washington. Within exhibits, you will find there is a copy of a telegram from Colonel Tripp to the contractor, advising him not to change the plans.

This occurred on one building, before we discovered it.
891 Q. 628. And what did you do with reference to these columns?

A. Well, we let that building go, but did not permit them to reduce the thickness of the concrete walls and columns in the other buildings.

Q. 629. You actually let that one go?

A. Yes, sir.

Q. 630. Now, do you recall another instance, in which the wall between two columns was out of line?

A. Yes, sir; that was a concrete wall in Building No. 2, in the basement, which extended from the base of a column to the base of another column.

Q. 631. It was supposed to extend—

A. It was supposed to be perfectly straight. However, in constructing the forms, the carpenter formed from one corner to the opposite corner of the second column, making the wall 8 or 10 inches out of line.

Q. 632. Will you demonstrate just what you mean by use of the blackboard?

A. Yes, sir; this is how the wall was designed and this here [indicating] is how it was installed, and I ordered it removed.

The matter was taken up by the contractor with the chief of 892 my department, and asked him to be allowed to fill in here [indicating] with hollow tile, which was refused, that being a tunnel or corridor which was constantly in use by trucks. So the wall was removed and installed according to the plans.

By the COMMISSIONER:

Q. 633. Changed according to your criticism?

A. Yes, sir.

By Mr. JULICHER:

Q. 634. Do you recall that they went to Washington about that?

A. Yes, sir; it was taken up on one of their numerous visits to Washington. Whether they made a special trip for that, or not, I can't say.

Q. 635. Were you consulted before that decision was made?

A. No, sir.

Q. 636. You say they consulted Colonel Tripp?

A. Yes; or one of his assistants.

893 Q. 637. Did Colonel Tripp communicate with you?

A. Yes, sir; in fact, he visited the site and saw it himself, and ordered me to instruct to take it out.

Q. 638. Captain Feltham, do you recall any difficulty regarding heating the buildings?

A. Well, there was a considerable lot of controversy between the general contractor and the subcontractor. The general contractor was constantly complaining of the boiler plant not being installed and in operation, so he could supply heat to the various buildings. But in the specifications, no provision was made for the general contractor to get or secure his heat from the central heating plant. He was to heat these buildings to a certain temperature; when certain work was being executed.

Q. 639. He was to use his own heating system; whatever it might be?

A. Yes; we had no objection to any system of heating he used, except that it did not damage the building in any shape or form. The argument, as I understand, between the mechanical contractor and the general contractor was, who should pay for the coal being used in this plant. I forget the exact date the plant was fired up and given a slow fire for a number of days specified, and then he could have used it. But during this controversy, I wired Central Office, of which there is a copy in the record, asking permission to operate the plant myself, so as to settle the argument

894 between the two contractors and charge it up to each one of them, as I thought fit.

Q. 640. Now, these contractors were the Blair Company and the Virginia Engineering Company?

A. Blair and the Virginia Engineering Company; yes, sir.

Q. 641. Continue?

A. My telegram to Central Office is on record, asking permission for me to operate the plant, so as to stop this argument and unpleasantness, but I didn't get by with that.

Q. 642. When did this take place—during the period the Virginia Engineering Company was testing the boilers?

A. Yes, sir; they build a slow fire in the boiler to seal it and set it up slowly, a slow fire, so it would dry out setting.

Q. 643. Couldn't it just as well supply heat, while they were doing that?

A. Some heat, yes; but it would have required more coal and it couldn't have gone up above a certain temperature, because we would have cracked our settings; you have to dry them out gradually.

Q. 644. Who was paying for the coal during the period that the boilers were being tested by the Virginia Engineering Company? Do you know whether the Blair Company indicated they were willing to pay for the additional coal?

A. I don't know whether they did, or not. It was between Blair and the Virginia Engineering Company, and I had
895 nothing to do with their arguments.

Q. 645. Did you ever meet Mr. Blair on this job?

A. I met Mr. Blair, I think, on three occasions.

Q. 646. Have you any way of knowing how often he visited that job?

A. No; I haven't. I only recall three visit to the job; one in about the middle of January, and we climbed all over the mountain hunting a quarry for the stone.

Q. 647. He went with you at the time you were looking for stone?

A. Yes; and Mr. Ellingsworth. Once, a few months after that, he visited the site, then again, the last time that I remember, was during the dedication of the building by the President.

Mr. JULICHER. That is all, your Honor.

The COMMISSIONER. You may cross-examine, Mr. Kilpatrick.

Cross-examination by Mr. KILPATRICK:

X Q. 648. Mr. Feltham, what size inspection force did you have on the job there at Roanoke?

A. Well, there were two of us, Mr. Dodd and myself, at first. Mr. Johnson was there for a part of the time.

X Q. 649. Mr. Johnson was simply inspector on the mechanical equipment work, wasn't he?

A. Well, we split it up; yes. He was on that particularly, but he supervised certain work, the steel work and other work, besides.

X Q. 650. Is he still in the employ of the Veterans' Administration?

A. Yes, sir.

X Q. 651. Where is he located now?

A. Located here in Washington.

X Q. 652. That is what you refer to as "Central Office?"

A. "Central Office"; yes, sir.

X Q. 653. When you refer to "Central Office," you mean the Veterans Administration in Washington?

A. Yes, sir.

X Q. 654. Go ahead. There was you and Mr. Dodd and Mr. Johnson?

A. And then I had two young inspectors who watched—or were connected with the concrete work, and when not busy, doing other things.

X Q. 655. What were their names?

A. One was named Lawrence and the other I forget.

X Q. 656. Was it Lipscomb?

A. Yes; Mr. Lipscomb.

X Q. 657. Do you know where they are now?

A. No, sir; I haven't the slightest idea.

X Q. 658. Who else did you have?

A. No other inspectors.

X Q. 659. Now, I believe Mr. Dodd had some duties in connection with the facility there, other than inspecting, did he not?

A. Yes; purchase and hire for cleaning up the grounds, but no building activities.

X Q. 660. Didn't he have some duties in connection with the employment office in Roanoke, also?

A. Some connection? No, sir.

X Q. 661. Well, I mean his duties in connection with this contract required him to visit there a good deal?

A. Yes; as I previously stated, the contractor's pay rolls were sent to the employment office to be checked, to see whether the men on the pay rolls had been cleared through that office.

X Q. 662. Yes; I understand that part.

A. That was all.

X Q. 663. Now, in that connection, all of Mr. Blair's pay rolls were furnished to you and checked by your office, were they not, throughout this contract?

A. Yes; and the subcontractor's pay rolls, also.

X Q. 664. And you sent them, or copies of them, into Central Office, did you not?

A. Yes, sir.

X Q. 665. You and Mr. Dodd were present at Roanoke in April 1938, when the plaintiff's testimony was taken; you attended that hearing along with Government counsel, did you not?

A. Yes, sir.

X Q. 666. You have read the record of the Montgomery testimony and the exhibits that were put into evidence there?

898 A. I have read them; yes.

X Q. 667. Now, Mr. Feltham, I understand you to say that, because of the slow progress made during the first three months of 1934, it would have been difficult, if not impossible, for Mr. Blair to finish his contract work by the first of November; is that right?

A. With his present organization that he had. Of course, you must take in consideration that you can put on three shifts, but it would be rather expensive for night work.

X Q. 668. Now, as of April 1, when, I believe, you testified about 5 percent of his contract had been completed—

A. Yes, sir.

X Q. 669. You said that he couldn't have completed all of it by the first of November, in your opinion. Now, how soon could he have completed his work, working with reasonable diligence and with reasonable cooperation from the mechanical equipment contractor, and do the other 95 percent, in other words?

A. Well, it would have taken him practically the time that it did take him.

X Q. 670. Do you recall how much of the Redmon work had been completed on June 26, when he quit the job?

A. I don't recall, but—

X Q. 671. You have your progress reports in evidence?

A. The progress reports should show that.

899 X Q. 672. That is Plaintiff's Exhibit 36. I hand you Plaintiff's Exhibit 36, being the progress reports for the mechanical equipment work, and ask you what percentage of completion did Redmon show on June 26, when he quit the job?

A. What was the date, Mr. Kilpatrick?

X Q. 673. June 26, 1934?

A. 6.3 percent.

X Q. 674. 6.3 percent?

A. Yes, sir.

X Q. 675. Now, in your progress reports, or Mr. Blair's—I don't believe you have one as of that date, because I assume

you cut off then, because that was the last date Redmon was there—I call your attention to Plaintiff's Exhibit 37, being the progress reports of the Algernon Blair work, and ask you if, on June 30, your report didn't show——

A. 27.1 percent.

X Q. 676. 27.1 percent completed?

A. Yes, sir; but you must take into consideration——

X Q. 677. I beg pardon. That answers my question. I have some other questions I want to ask you in connection with those reports. Now, from that date on until this contract was completed—that was June 30 that you have there, which was 7½ months, wasn't it?

A. Yes, sir.

X Q. 678. And then Mr. Blair, in 7½ months, did finish 72 percent of his work, didn't he?

900 A. I can't state that from memory because I have so many buildings to think of.

X Q. 679. He finished on February 15, 1935, didn't he?

A. Yes, sir.

X Q. 680. If he had completed that percentage—what was it, again?

A. 27.1 percent.

X Q. 681. Then he completed the difference between that and 100 percent by February 15, 1935, didn't he?

A. I don't know. It depends on what progress he made——

X Q. 682. Suppose you look at your report on February 15, 1935, and see if he was 100 percent completed by then? Your report of February 15, shows 100 percent completion by Blair on that date, doesn't it?

A. Yes, sir.

X Q. 683. February 14?

A. February 14 is right; yes, sir.

X Q. 684. Then he did complete over 70 percent of his work in 7½ months, didn't he?

A. Approximately that; yes.

X Q. 685. And coming to Redmon, he completed 94 percent of his work in the same period, didn't he, because he had completed only about 6 percent when he quit?

A. Approximately; yes.

X Q. 686. Why did Redmon quit?

901 A. Well, it would be hearsay, if I was to tell you.

X Q. 687. You had no knowledge of it?

A. No knowledge whatever.

X Q. 688. You are sure about that?

A. I am informed he went into bankruptcy, that is all I know.

X Q. 689. You are sure, at the time, on the job, you know nothing about his difficulties?

A. No.

X Q. 690. Now, those daily reports you have in front of you will show the number of employees on the job on the day of each report, will they not?

A. Yes, sir.

X Q. 691. Will you look at the report on Redmon as of June 26, which I believe you have open, and tell us how many men he had at work on that day?

A. 16; the day he discontinued work.

X Q. 692. I believe you testified yesterday that, when he discontinued work, the Maryland Casualty Company, his bondsmen, took up the work for a short period, and then made a contract with the Virginia Engineering Company to take it over; is that right?

A. Yes, sir.

X Q. 693. And I believe you testified, from your log, that on June 29, the Maryland Casualty Company had 15 men on the mechanical work on that date?

902 A. Yes, sir.

X Q. 694. Will you refer to your daily log again? On August 1, the Virginia Engineering Company had a force of 107 men on the job?

A. Yes, sir.

X Q. 695. Now, you have told us, I believe—if you haven't, I will ask you—at June 30, Mr. Blair had completed 27.1 percent of his work. Now, let's take July 31. What percentage had he completed then?

A. 35.5 percent.

X Q. 696. If we subtract 32.9 percent from 35.5, we find that he had accomplished 2.6 percent during that month?

A. Yes, sir.

X Q. 697. I believe it was your testimony, yesterday, that Mr. Redmon's force was sufficient; that the fact that the Virginia Engineering Company had a so much larger force later on was, because Blair had gotten along to where they needed more mechanical equipment men?

A. Yes, sir.

X Q. 698. I think you said that the increase in Blair's work of about 2 percent justified the increase of about 600 percent in the mechanical equipment force; is that your testimony?

A. No; you must take into consideration that in the first 60 or 90 days, the mechanical men had nothing whatever to do. Therefore, they didn't really commence their work until they had

a place to work. So it wouldn't be fair to compare the percentage of progress made by the mechanical contractor and the general contractor as of the same dates.

903 X Q. 699. Well, your testimony, at any rate, is that Mr. Redmon never did delay Mr. Blair materially in this work?

A. I won't say never did. There is always some delay in the best regulated organizations. Possibly it is that the general contractor decided to move over on another part of a building, which is frequently done, then Mr. Redmon had to stop where they were and go over there, or else delay them. There is always minor delays that come in, Mr. Kilpatrick, on all jobs. I have never heard of one where all of the subcontractors coordinated and no one gave cause for delay.

X Q. 700. We understand that they are all human beings, but your testimony is, that Mr. Blair wasn't unreasonably delayed beyond what would ordinarily be anticipated in this type of work by the Redmon Heating Company?

A. That is right, sir.

X Q. 701. The Redmon Heating Company arrived at the job in ample time and should not have gotten there any sooner, under your conception of its duties?

A. I didn't think it would be necessary, but the general contractor said not.

X Q. 702. You didn't think so at the time?

A. It was necessary for him to have an organization.

X Q. 703. That wasn't my question. My question was, did you think, at the time, he should have been on the job before the time he got there, which was March 19?

A. Well, he could have been on the job a little sooner.

904 X Q. 704. My question was, did you think, at the time, he should have been there any sooner?

A. No.

X Q. 705. You are certain of that?

A. That is my opinion.

X Q. 706. That is your recollection of the way you felt about it at the time?

A. Yes.

X Q. 707. Now, you have testified here that Mr. Blair did not assert any claim during the course of this work, on account of the Redmon delay?

905 A. No; I don't recall any coming through my office.

Mr. JELICHER. May I offer a correction here? The question was, whether complaint was filed under the provisions of paragraph 9 of the contract. Paragraph 9 of the contract has very specific provisions, that was what I asked.

Mr. KILPATRICK. Your question had to do with a request for extension of time, on account of delay; is that what you had in mind?

Mr. JULICHER. Yes; the two sections of the contract, 9 and 15, did take care of delays and disputes.

By Mr. KILPATRICK:

X Q. 708. Mr. Feltham, I hand you Plaintiff's Exhibit 42, being a file of correspondence produced by the Veterans' Administration in response to a call from this Court, and introduced in evidence in Montgomery, Alabama. I will ask you to turn to a letter dated January 25—and I believe those letters are in chronological order—January 25, 1934, from the Director of Construction, signed in your name, I believe, by Mr. Dodd?

A. January what?

X Q. 709. January 25, 1934. I will ask you to read that, and then I will ask you a question about it?

A. "It is requested"—

X Q. 710. You don't need to read into the record; just read it to yourself.

906 A. Yes, sir.

X Q. 711. That was a letter from your office, indicating that he should have a representative on the job fairly early, wasn't it?

A. That was January 25; yes, sir.

X Q. 712. Now, turn over here to January 27, a letter to the Redmon Heating Company from J. Ernest Price, of the Administrative Division of the Construction Service; that is here in Central Office, is it not?

A. Yes, sir.

X Q. 713. Read that letter and let me ask you something about it. That was notice from the Central Office to the Redmon Heating Company that they should have men there in the near future to locate the sleeves, wasn't it?

A. Yes, sir.

X Q. 714. On January 29, you wrote a letter to the Director of Construction, with reference to the Redmon Heating Company, in which you said: "I would advise that, up to this date, neither the contractor nor any of his employees have reported on the site, and the value of the work done on the contract is zero"; that is correct, isn't it?

A. Yes, sir.

X Q. 715. Turn now to February 9, and I will ask you if the following letter wasn't written to the Redmon Heating Company by the chief of the Administrative Division of your Central Office?

A. It appears to have been; yes, sir.

907 X Q. 716. I won't quote the whole letter, but in that letter, wasn't the statement made: "Under date of February 7, the supervising superintendent of construction"—that is yourself, isn't it?

A. Yes, sir.

X Q. 717. "Again invited attention to the fact that you have no representative on the job. This matter was invited to your attention in the letters of January 27 and February 6, and you are advised that prompt action is required on your part in sending a representative to the station, in order to avoid causing delay to the general contractor in placing the sleeves, etc., and your cooperation in connection with this matter is requested." Colonel Price didn't agree with you, though; that Redmon didn't need to have a representative there before March 19, did he?

A. This is February 9. We were endeavoring, on account of the complaint—

X Q. 718. Mr. Feltham, will you answer my question? Doesn't that indicate that Colonel Price didn't agree with you, that Redmon didn't have to have a representative there until March 19?

A. Yes; sure.

908 X Q. 719. You still think there was no necessity for Redmon to have a representative there before March 19, do you?

A. Personally, no.

X Q. 720. All right; look at the letter of February 15; that you wrote Redmon Heating Company, yourself?

A. Yes, sir.

X Q. 721. Suppose you read the last paragraph of that letter?

A. "Due to the amount of concrete construction involved in the above mentioned articles, you are requested to have your superintendent report to the site at the earliest possible date, as the general contractor has notified this office of his intention to proceed with the general construction at the earliest possible date, and the nature of the concrete construction is such that you should be prepared to perform the same as the contractor proceeds with his general construction."

X Q. 722. And on February 15, you did think the Redmon Company should have a representative there, didn't you?

A. Based on the report from the contractor.

X Q. 723. Did you not, at that date, think so? That is what I am asking you?

A. Yes, sir.

X Q. 724. That is all?

A. That is right. Can I not state my reasons for doing that?

X Q. 725. Your counsel can bring out any further comment you care to make. You did so state, did you not?

909

A. I don't understand court procedure, Mr. Kilpatrick.

The COMMISSIONER. You can give an explanation, if it is necessary to your answer. You don't necessarily have to say yes or no on that.

The WITNESS. This letter was based on a request from the general contractor to have the heating and plumbing contractor on the job. He informed me he was going to proceed with the work.

The COMMISSIONER. I heard you read the paragraph.

The WITNESS. I based this letter on his request.

The COMMISSIONER. I think that is a fair explanation, in view of the paragraph that you read.

By Mr. KILPATRICK:

X Q. 726. On February 15, 1934, you did think that the Redmon Heating Company should have a representative on the job right away, didn't you?

A. Yes, sir.

X Q. 727. You know Mr. W. R. Johnson's signature?

A. Yes, sir.

X Q. 728. This is a letter written by him?

A. I think it is; yes.

X Q. 729. This is a part of the correspondence furnished by the Veterans' Administration and—

Mr. JULICHER. But I do not think he is qualified to identify Mr. Johnson's correspondence, unless it was addressed to him.

By Mr. KILPATRICK:

X Q. 730. Mr. Johnson was one of your subordinates?

A. Yes, sir.

X Q. 731. This is on the letterhead of the Roanoke job?

A. March 10? That was written during my absence from the job.

X Q. 732. Suppose you read it over and let me know if you knew about the letter being sent at the time?

A. I don't recall seeing this letter.

X Q. 733. Let me ask you this: This is a letter written by Mr. Johnson to the Veterans' Administration, Central Office here, in which he says—I refer now to the letter of March 10, 1934, which is a part of Plaintiff's Exhibit 42—"The record indicates that the necessity for a representative of the Redmon Company to be at the site was called to the attention of the Central Office by letters from this office under date of January 25 and February 7." Those are the letters we were talking about?

A. Those are the letters I wrote.

X Q. 734. "And by letters directed to the contractor from this office under dates of February 15, 19 (telegram), and 22." You knew about those communications at the time?

A. Yes, sir.

911 X Q. 735. "It is the understanding of this office that the general contractor has been unable to obtain a reply from the Redmon Company in connection with the coordination of the steel work for the boiler house, that he has contemplated making a claim for delay, because of this fact." Did you know about that?

A. I recall something, yes, sir; but I don't recall they ever put in any claim.

X Q. 736. You knew he was complaining about it?

A. Oh, yes.

X Q. 737. "In line with the foregoing facts, this office cannot urge too strongly the necessity for the immediate presence of a representative of the Redmon Company and the initiation of work under their contract, and request that Central Office take such immediate proper action as will effect the results desired."

Simply for the record and for the convenience of the Commissioner, without taking too much time, I would like to call particular attention to the letter, which is contained in Exhibit 42, from Co. Tripp, Director of Construction, to the Redmon Heating Company, dated March 13, 1934, which summarizes the numerous requests and demands which had theretofore been sent in, to have a representative at the job. I will not go into the rest of that in detail; that letter summarizes it.

912 Now, the Redmon Heating Company's representative first arrived there, I believe the record shows, On March 19, 1934; is that your recollection?

A. I don't recollect the exact date, sir.

X Q. 738. Who was that representative?

A. Mr. White.

X Q. 739. He is the man you said continued on an superintendent until Redmon quit the job, and then was employed, first, by the bonding company and later by the Virginia Engineering Company?

A. Yes, sir.

X Q. 740. Where is he now, do you know?

A. I don't know his location, but he is still employed by the Virginia Engineering Company, was the last report I had of him.

X Q. 741. I had you Plaintiff's Exhibit 14, which I believe was one of the papers furnished in response to a call—that is a true copy of the notice to proceed, I believe, given to Redmon?

Mr. JULICHER. Yes; I will take your word for it, but I do not know.

Mr. KILPATRICK. That is the one we corrected the date on there, which shows 1935 and should be 1933.

By Mr. KILPATRICK:

X Q. 742. He was given notice to proceed on December 913 19, 1933, wasn't he, Redmon Heating Company?

A. Yes, sir.

X Q. 743. That was the same date on which Mr. Blair was given notice to proceed, wasn't he?

A. I think so; yes, sir.

X Q. 744. And I believe you testified that the contractor was supposed to begin his work within 10 days after receipt of notice to proceed?

A. That is right; yes, sir.

X Q. 745. That is a contract requirement?

A. Yes, sir.

X Q. 746. Then, under its contract, the Redmon Heating Company should have begun work on what date, under the contract requirements?

A. After 10 days. That would be the 29th of December.

X Q. 747. But you don't consider that the provision in the contract is important in his case?

A. Well, I would say probably he had begun by sketching his materials and ordering his materials. He couldn't install them then, because the contractor hadn't started to work.

X Q. 748. I am glad you brought that up, as to beginning 914 his work on notice to proceed. He should have begun to place his orders for materials, should he not?

A. Probably he did.

X Q. 749. And didn't he have some detailed data to submit to the Veterans Administration for approval—well, the Central Office had to approve the type of equipment to be used, didn't it, to be installed?

A. Yes, sir.

X Q. 750. Shop drawings and things of that sort had to be furnished and approved by Central Office?

A. Yes; both contractors had to submit shop drawings.

X Q. 751. Was the Redmon heating Company very diligent about submitting those drawings?

A. That was handled directly with Central Office and not with the sub-office at Roanoke.

X Q. 752. Now, you testified, yesterday, I believe, that Mr. Blair did not begin work under his contract until January 15; is that correct?

A. Yes; the excavation started, I think on the 16th.

X Q. 753. Although he had received notice to proceed shortly after December 19, and should have begun work around December 29, or shortly thereafter?

A. Yes.

X Q. 754. And the point was, that he didn't get started until January 16?

915 A. No, sir.

X Q. 755. He had some materials to order and some sub-contracts to make, too, did he?

A. Yes, sir.

X Q. 756. You didn't know what he was doing along that line?

A. I wasn't familiar with Mr. Blair's office in Montgomery who never notified me what they were doing. I had no way to know what they were doing.

X Q. 757. So when you say he didn't begin work until the 16th, you are not referring to that type of work?

A. No.

X Q. 758. You are referring to the excavation—

A. The actual construction.

X Q. 759. Now, as a preliminary to the excavation, the site had to be laid out, didn't it?

A. That is right.

X Q. 760. And that work was going on constantly, beginning about December 19, wasn't it?

A. That is termed the preliminary work.

X Q. 761. I am asking you if it wasn't going on then?

A. Yes, sir.

X Q. 762. Mr. Lacy was there with some assistants, laying it out?

A. Yes, sir.

By Mr. JULICHER:

916 X Q. 763. Do you know that to be a fact? You weren't there, yourself?

A. No; I only know it by the reports submitted. Mr. Dodd could answer that question better than I can.

By Mr. KILPATRICK:

X Q. 764. When did you arrive there?

A. I arrived, on my first visit to Roanoke, on December 20, 1933, and I left the following day for Atlanta, Georgia.

X Q. 765. When did you return to the job?

A. I am looking for that now, sir. I returned to Roanoke on January 22.

X Q. 766. You weren't there on the 16th?

A. No, sir.

X Q. 767. You weren't there on the 10th, were you?

A. No, sir.

X Q. 768. I call your attention to a letter included in the folder which is Plaintiff's Exhibit 27, a letter dated January 10, 1934, addressed to Algernon Blair, and I ask you if you signed that letter?

A. That looks like my signature, sir.

X Q. 769. Apparently you were there on January 10, then. Glance hurriedly through your log, please. I assume you were present in Roanoke or Salem at that time, were you not?

A. I don't know. I can tell you by referring to 917 .. my travel orders, sir.

X Q. 770. At any rate, you wrote that letter, didn't you?

A. I presume I did. I was in error when I told you that, now, having refreshed my memory, and I returned to Roanoke on January 9, 1934.

X Q. 771. And you left there on December 21, I believe you said?

A. Yes, sir.

X Q. 772. If you returned there on the 9th, and you wrote this letter on January 10, asking Mr. Blair when he proposed to commence work under his contract, the chance is that you had not reviewed the log as prepared by Mr. Dodd up to that time, to see what Mr. Blair had done, isn't it?

A. Well, I was referring to the actual construction, not the preliminary work, such as building sheds and things of that kind, which it is necessary to build, and stake out the ground for the actual construction.

X Q. 773. Your letter reads: "It is requested that you advise this office immediately what date you propose to commence work under your contract." You knew, did you not, that Mr. C. W. Roberts, the general superintendent, was there at that time?

A. Representing Blair; yes.

X Q. 774. You didn't ask him when he proposed to commence work, did you?

918 A. I did ask him and could get no satisfaction; promises, promises, promises, and I wanted to get it in writing as to the date they proposed starting.

X Q. 775. I ask you to look at your log again and see if you don't report engineers and helpers doing surveying at the job on December 21, 1933, December 22, December 23, December 24, Sunday, and the 25th, Christmas, and the 26th; engineer and 2 helpers locating the building lines? In other words, doesn't your log throughout that time from that time on until January 9, show activities at the building site by the Blair employees?

A. Yes; executing preliminary work, but that isn't actual construction.

X Q. 776. I believe your testimony about Mr. Redmon was, however, that he probably had commenced work; that he had a lot of work to do before he got around to the point of making inserts; etc.?

A. Yes; but in referring to a general contractor, Mr. Kilpatrick, we never really say that they are doing any work in the field until the work of construction is commenced.

X Q. 777. Let me call your attention to Mr. Blair's answer to that letter, dated January 11.

A. That is by Mr. Divinney.

X Q. 778. Dictated by Mr. Divinney and signed by Mr. Blair, or signed in Mr. Blair's name. Read that letter and tell 919 as if you consider that a satisfactory answer to your inquiry as to when he proposed to commence the work?

The WITNESS. I notice in this letter he says, "I have to advise you that a representative of mine arrived there on December 18, and actually started laying out the ground." I can explain why I made those remarks of starting the work, and that is probably an old railroad term. We don't consider building a railroad making the survey, that refers to the actual construction. Making a survey for a railroad—you wouldn't consider that actual construction.

X Q. 779. Do you think that was a reasonable answer, as to his activities?

A. Fairly well; yes.

X Q. 780. Who is Colonel Tripp?

A. He is the Chief of Construction Service, Veterans Administration.

X Q. 781. When was it that he visited the job and ordered some wall or columns removed, that you mentioned?

A. I can't recall, but I would have to refer to the diary. That was one of the walls there on the blackboard.

X Q. 782. I mean, what time of year was it?

A. I don't recall. I would have to look back.

920 Mr. JULICHER. Look at July 18.

The WITNESS. He arrived in Roanoke July 18 at 8:30 a. m.

By Mr. KILPATRICK:

X Q. 783. And left there when?

A. Left at 3:00 p. m., the same date.

X Q. 784. Turn to October 4, and tell me if Colonel Tripp was there on that date?

A. If he was, there is no record made in the log.

X Q. 785. That doesn't necessarily mean that he wasn't there, that you didn't put a record in the log, does it?

A. Oh, no.

X Q. 786. Didn't he come there along about that time, in connection with seeing what could be done to speed up the work, in advance of the President coming down?

A. I think that had nothing to do with it, sir. His main object, I think, was to give a general inspection of the construction work and see for himself what progress had been made.

X Q. 787. When he visited the job, did he express to you any dissatisfaction with the quality of the work that Mr. Blair was doing?

A. Yes, sir.

X Q. 788. He did?

A. Yes, sir.

X Q. 789. He didn't think it was good work?

A. He condemned—I don't remember whether it was the
921 first or second trip, but he condemned quite a number of columns, which were honeycombed.

X Q. 790. I am not speaking of that. I am speaking of the work in genera'; did he express to you any opinion that it was good work, or bad work, or mediocre, or what?

A. Mediocre.

X Q. 791. That is, the work done by the Algernon Blair organization?

A. Yes.

X Q. 792. You know Colonel Tripp's signature, I suppose?

A. Yes, sir.

X Q. 793. I ask you to read this letter of October 5, 1934, from
922 Colonel Tripp to Mr. Blair, which is a part of Plaintiff's Exhibit 27.

Mr. JULICHER. I object to the reading of that into the record.

Mr. KILPATRICK. I do not want him to read it into the record. I want him to read it to himself and then I am going to ask him questions. I would like for the Commissioner to also glance over that letter, in order that the questions may be clear.

By Mr. KILPATRICK:

X Q. 794. Now, in view of that letter, Catpain Feltham, do you care to offer any explanation, or change your testimony in any way, as to Colonel Tripp considering this a mediocre job?

A. No, sir.

X Q. 795. Do you know Mr. Garden, of the old Virginia Brick Company, that furnished the brick for this job?

A. Yes; I met him several times.

X Q. 796. You wrote him a letter, praising that brick down there, didn't you?

A. I think I did. It was very good brick.

X Q. 797. I will ask you if, in that letter, you didn't say that "After final inspection, I am informed that these brick are more satisfactory and that the job here is considered the best and most attractive among all of the Veterans' facilities throughout the United States?"

923 A. I believe I did write that letter; yes, sir. That was referring to the brick, though.

X Q. 798. I will ask you if that is a copy of the letter you wrote, to the best of your recollection?

A. Yes; I wrote this letter, and in that I state: "It gives me pleasure to advise you that, after final inspection, I am informed that these brick are more satisfactory," etc. That wasn't my opinion. I was merely informed by others. That wasn't my opinion.

Mr. KILPATRICK. Well, we offer that in evidence.

Mr. JULICHER. Before I say anything about this, does this refer to the brick or to the buildings?

Mr. KILPATRICK. It speaks for itself. He says that is a copy of a letter he wrote.

The WITNESS. It is the brick, it refers to the brick.

The COMMISSIONER. I guess the letter will be the best evidence, and I will accept it as Plaintiff's Exhibit 103.

(Said letter from Feltham to Garden, so offered and received in evidence, was marked, "Plaintiff's Exhibit No. 103," and made a part of this record.)

By Mr. KILPATRICK:

X Q. 799. Mr. Feltham, what was the height—or how did the height vary in the spandrel beams, and I now refer to the wall beams in the buildings there, in other words, the perpendicular height of the beams in the walls?

924 A. Well, I couldn't tell you that offhand. We have the schedule—

X Q. 800. We have the plan?

A. You have the plan; yes.

X Q. 801. I wish you would see if you can find in those the width of these various beams. Perhaps if you could do that—

The COMMISSIONER. He can do that after we adjourn, or take the time out to do it now.

The WITNESS. Every beam is given a size and that is on the blueprints.

By Mr. KILPATRICK:

X Q. 802. The plans would show, wouldn't they?

A. The plans would show the depth of each beam and the width.

X Q. 803. I believe in the correspondence that has been put in this morning, there was some covering a request by Blair that, in estimating his percent of completion for the purpose of payment, you take into consideration the forms and steel work in place, even though the concrete had not been poured. But it was ruled that he couldn't take that in, in estimating the percentage of completion; that is correct, isn't it?

A. Yes, sir; that is correct.

Mr. JULICHER. You say we offered testimony to that effect?

925 Mr. KILPATRICK. No; I say there is a letter on that subject. There is no particular controversy about it.

By Mr. KILPATRICK:

X Q. 804. I was leading up to this question: When you reported in your progress report on the percentage of completion, you did not take into consideration the forms and reinforcing steel in place, but in which no concrete has been poured, did you?

A. No, sir; the form lumber is salvaged out of each job, and the contractor can realize something and, therefore, could not be taken in consideration in preparing the estimates.

X Q. 805. Let me ask you this: When your progress report would say, for example, that Mr. Blair had completed 25 percent of his work, that wouldn't take into consideration any of the forms for pouring concrete, which had been erected with the reinforcing steel in them, the labor and all that that had gone into that, because your method of estimating was based on the completed concrete work, wasn't it?

A. The work installed, yes; that isn't a part of the building; the forms aren't.

X Q. 806. I just wanted to make it clear as to how you arrived at your percentages in those cases. You have testified that there were apprentice carpenters employed by Mr. Blair and paid a rate between 45 cents and \$1.10 on this job?

A. Yes, sir.

926 X Q. 807. That is your recollection from having checked his payrolls, I assume?

A. Yes, sir.

Mr. JULICHER. Just a moment. I do not think the pay rolls have actually been checked; we just received them.

The WITNESS. I checked 2 or 3.

Mr. KILPATRICK. I mean checked at the job during the construction, which was a long time ago.

Mr. JULICHER. That is his recollection since that time?

Mr. KILPATRICK. Yes; that is correct.

By Mr. KILPATRICK:

X Q. 808. Now, Mr. Feltham, if it should develop here, and should be proved beyond the peradventure of a doubt, that Mr. Blair did pay \$1.10 an hour to carpenters on this job, whether they were building forms or laying floors or whatnot, why do you suppose he paid that rate, if you would have permitted him to pay the intermediate rate to carpenters on rough work?

A. I don't quite get your question.

X Q. 809. Yes; I guess it was a little involved. Let me ask you this: In carpentry work, isn't there a semiskilled class of carpenter recognized, as well as the class of work which a journeyman will do, but would not be entitled to \$1.10 an hour, for example, rough work? If a skilled mechanic does rough work, he ordinarily isn't paid the skilled mechanic's wage for that, is he?

927 A. The wages of carpenters employed on this particular job were governed by the union. They were union men and the contractor was paying union wages. The contractor had a contract with the unions to supply him with men. These mechanics weren't taken off of the employment bureau, at all. It was optional with the contractor to get his men through the employment bureau or through the union, and of course the union rates and scale of wages prevailed, and they were paid that. All I was interested in was, that they didn't pay them less than \$1.10. They could have paid them \$5 an hour.

X Q. 810. You were interested in what?

A. I wasn't interested in what they paid these carpenters, only to the extent that they should pay them \$1.10. That was the minimum wage for mechanics.

X Q. 811. Then any carpenter on this job, under your construction of the contract, no matter what kind of carpentry work he was doing, if he was using a hammer and saw, he was entitled to \$1.10 an hour?

A. The rules governing that were the rules of the carpenters' union.

X Q. 812. I am talking about the contract provisions.

A. The contract provisions only give a minimum of two scales of wages.

X Q. 813. All right, now, Mr. Feltham—

A. \$1.10 and 45 cents.

928 X Q. 814. Do you know when Mr. Blair entered into the contract with the labor union for carpenters?

A. I don't recall the date.

X Q. 815. Let's assume that he didn't enter into that contract until June 22, 1934, effective June 27. Do you have a copy of it?

Mr. JULICHER. Yes; do you want it?

Mr. KILPATRICK. We have one, also. We have agreed this is a copy of the contract between Blair and the union?

Mr. JULICHER. Yes; do you want to offer it in evidence?

Mr. KILPATRICK. Yes.

The COMMISSIONER. There being no objection, it will be received and marked as "Plaintiff's Exhibit 104."

(Said contract between Blair and union, so offered and received in evidence, was marked, "Plaintiff's Exhibit No. 104," and made a part of this record.)

By Mr. KILPATRICK:

X Q. 816. I will ask you if that contract is not dated June 22, 1934?

A. Yes, sir.

X Q. 817. You have seen that before, I suppose?

A. Yes, sir.

X Q. 818. Then there was nothing to require any particular union scale, prior to that date, was there?

A. No; because he was working open shop.

929 X Q. 819. Now, in working open shop, under the provisions of the contract that Mr. Blair had for the building of this Roanoke hospital, was it your ruling, or construction of that contract, that every carpenter, who worked with a hammer and saw, on that job, was to get \$1.10 an hour, no matter what type of carpentry work he was doing?

A. Well, there were no apprentices on the job; they were all put in as carpenters. We had no objection to paying the intermediate wages to the so called carpenter who couldn't perform a day's work, couldn't perform the proper duties of a skilled mechanic.

X Q. 820. Suppose a skilled mechanic were engaged in building a scaffold, was he entitled, under the terms of this contract, to \$1.10 an hour, under your ruling?

A. If he had a couple of laborers with him, which was handling the material—if he had intelligence enough to go ahead and build the scaffold, he certainly was a skilled mechanic.

X Q. 821. Now, I understand your Honor's suggestion a while ago, but I don't get either yes or no imparted in the answer, at all. I would like to know simply this, Mr. Feltham: You have a skilled mechanic, who is laying floors and doing rough work, or doing framing work, and is undoubtedly entitled to \$1.10 an

hour for that work. Say his name is John Smith, and you transfer him over here to building a scaffold. Is he entitled to \$1.10 for doing that labor on that scaffold?

A. If he is a carpenter; yes.

X Q. 822. He is, under this contract, that was your ruling and your construction of it at the time?

A. Yes, sir.

X Q. 823. You testified, I believe, that there were apprentice carpenters on this job, who were getting intermediate wages?

A. Yes, there was; and had probably before this contract.

X Q. 824. I don't understand just what you would classify as apprentice carpenters. Would you explain that a little more for the benefit of the Court?

A. Well, like most of the trades, they are entitled to so much an hour for the first year, so much the second, and so much the third, and a journeyman at the end of the fourth year, when they have served their time as apprentices. If he serves two years, he is paid so much under these different scales of wages in the different localities.

X Q. 825. Then while he is a learner he gets more than a common laborer?

A. He starts his first year off as a helper or apprentice for carrying material to the journeyman and then a little later on he becomes a man who drives a few nails, and is learning how to lay out work, and so on up to the fourth year apprenticeship in most of the trades.

Mr. JULICHER. May I ask one question, to help clear this up, if you do not mind?

Mr. KILPATRICK. Yes; go right ahead.

By Mr. JULICHER:

X Q. 826. Is it conceivable that a first year apprentice might get less pay than a laborer?

A. In many instances, apprentice boys have to pay for their first year of training.

By Mr. KILPATRICK:

X Q. 827. On open shop carpentry work, Mr. Feltham, in doing mill work and trim, did you require that all of the carpenters or it be skilled workmen, or did you allow some semi-skilled on it?

A. I don't recall, sir. I can't answer that question.

X Q. 828. What is the custom in that regard, ordinarily?

A. That is, installing trim and finish in a building?

X Q. 828. Yee?

A. Usually you get a first-class mechanic for that work.

932 X Q. 830. You don't have a definite ratio of skilled mechanics to semiskilled for that type of work, do you?

A. No; we never use any semiskilled.

X Q. 831. Is that the same as floors—is that same thing true of floors, laid with finished wood?

A. Yes; it is skilled mechanical work.

X Q. 832. How about ceiling and walls, wainscoting, panels?

A. That is all mill work; it is erected by skilled mechanics, or should be.

X Q. 833. What about forms for finished concrete surfaces?

A. By mechanics.

X Q. 834. You do not allow any semiskilled on that?

A. Yes; classed as helpers or apprentice boys.

X Q. 835. Would there be any definite ratio between the number of carpenters and apprentices on that type of work?

A. Well, yes; that is usually governed by the union rules.

X Q. 836. I am speaking now on an open shop job, what is the customary way of doing business?

A. I am not thoroughly familiar with that. The changes, you know, take place so many times, and most all of our work is under the union rules.

933 X Q. 837. Now, how about erecting the forms for concrete, which is later on to be covered, so that it won't be seen—I suppose you would call it rough concrete work, not smooth—in erecting the forms for that kind of work, do you know what is the ratio of skilled mechanics to apprentices—do you know what that would be in that type of work?

A. No; I do not.

X Q. 838. What about the building of scaffolds—do you know what the ratio would be there tween skilled and semiskilled?

A. Are you speaking of open shop?

X Q. 839. Yes?

A. Well, one mechanic and one helper—one apprentice boy and maybe one helper to carry the material from the lumber pile.

X Q. 840. No; I am speaking with respect to the actual carpentry work?

A. That is carpentry work; yes.

X Q. 841. You do not allow any apprentice to do any of the carpentry work on that sort of thing, to assist the carpenter?

A. No.

X Q. 842. Just a ratio of one to one then?

A. Yes.

934 X Q. 843. I recall your attention to Plaintiff's Exhibit No. 39. In Plaintiff's Exhibit No. 39, which is a publication by the P. W. A.; designated "Clarification of Activities Governing Classification of Labor on Open Shop Carpenter Work," I find

the following definition: "Carpenters' assistants are defined as semi-skilled workmen who are not customarily required to furnish their own tools, and shall not be required to furnish any on P. W. A. projects." Now, up to that point, I believe that was your general understanding of what semiskilled carpenter work is?

A. Yes.

X Q. 844. It goes on to say: "This classification also includes workmen who, even though they may be competent to perform skilled work, are employed for and permitted to do only the work normally required of semiskilled craftsmen. Such workmen are entitled to receive the semi-skilled wage rate." As I understand your testimony, you don't agree with that classification?

A. Read that again, please?

X Q. 845. It begins here [indicating]?

A. That man, although he is a carpenter, if he performs the duties of an apprentice—

935-936 X Q. 486. Was I correct in that understanding?

A. Well, it depends on how that man appears on the pay roll. If he appears as a carpenter on the pay roll, you would have to pay him a carpenter's wage. If he appears as skilled, or semiskilled, you have to pay him according to the wages for what he is designated.

X Q. 847. Then if he were placed on the pay roll as a semi-skilled carpenter, or carpenter's apprentice, or what not, and you went out there and found he was working along the side of a skilled carpenter on building forms and using a hammer and nails, what would you have done? Wouldn't you have said, under those circumstances, that he was doing skilled work and was entitled to \$1.10 an hour?

A. If he was performing skilled work; yes.

X Q. 848. I am telling you what he was doing; he was building forms.

A. Then he should be paid semiskilled wages—I mean, he should be paid skilled wages, as specified.

X Q. 849. Then you don't agree with this classification of the P. W. A., which says such workmen are entitled to receive the semiskilled wage rate?

A. I am unable to interpret those regulations.

X Q. 850. If the regulation—

A. Pardon me, but in questioning about the labor situation on the Roanoke job, Mr. Dodd, who was assigned that particular duty, could enlighten you more than I could, because I had general supervision, that is all, and Mr. Dodd had the details.

X Q. 851. If Mr. Dodd said that all carpenters, no matter what type of carpentry work they were doing, had to be paid \$1.10 an hour, you approved that ruling, didn't you?

937 A. Absolutely.

X Q. 852. Did you have opportunity, during the luncheon recess, to examine the plans as to the widths of the spandrel beams?

A. Well, I am familiar with the plans, and it isn't necessary for me to examine them. I glanced over them in our Central Office.

X Q. 853. Could you tell us about the dimensions?

A. Well, there are so many dimensions—

X Q. 854. Did you find many that were 36 inches in thickness?

A. Some 36, some 34, some 20, some 18, some 16.

X Q. 855. Wasn't the overwhelming majority of them 24 inches, or less?

A. I didn't count them up, sir.

X Q. 856. And you haven't any definite idea whether the majority of them were 36 inches, or not?

A. The percentage of the different size beams—no; I couldn't tell you that. It would be a rough guess and of no value to you.

By the COMMISSIONER:

X Q. 857. Would the same objection apply to the 12-inch or 16 or other small dimensions, as it would to the 36-inch?

A. Yes; I would say so.

938 X Q. 858. What I am getting at is, if the dimension had nothing to do with your objection to the procedure, you would have the same objection to all of them, would you not? That is what I want to know.

A. Well, we had no objection to the method in which the contractor built the scaffold, but the results that we were trying to obtain. We never dictate to a contractor what scaffolding he shall use or what method of scaffolding he shall use.

By Mr. KILPATRICK:

X Q. 859. But your artist, who prepared Defendant's Exhibit R, has not prepared a similar sketch showing a workman on a 16-inch beam, has he?

A. He made an awful mistake in that, because you will never get a bricklayer to lay prone to lay brick. Therefore, he couldn't reach down for them. By squatting, he could possibly get down 12 inches below the top of the spandrel beam.

X Q. 860. Didn't you state, repeatedly, during this construction work, to Mr. Roberts, that any man who used the tools of a mechanic must be paid \$1.10 an hour?

A. I might have made such a statement; I don't recall it. I always referred him to the specification requirements.

X Q. 861. Mr. Feltham, in connection with the drawing you made on the blackboard, could you tell us on what building that occurred?

A. No. 2 Building; in the basement of No. 2 Building.

X Q. 862. In the basement of No. 2 Building?

A. Yes, sir.

X Q. 863. Now, is this the place where it occurred, that I am indicating here?

A. I have a record of the number of columns, and the columns are not numbered here. By referring to my record, I could give you the exact location of the wall in question.

By the COMMISSIONER:

X Q. 864. Would any two columns do to make your point? Would any two particular columns suffice? Do you have to have the very ones? Are there two columns there typical of what you are talking about?

A. Yes, sir.

The COMMISSIONER. I do not think it is important which particular number it was.

Mr. KILPATRICK. I think I can help him now, if your Honor please.

The COMMISSIONER. All right, sir.

By Mr. KILPATRICK:

X Q. 865. If you will look at this plan, No. 2-18, see if you can't identify the column number there?

A. I can't identify it from here. I would have to refer to my notes. You do not see the wall out there, that is the footing.

X Q. 866. I am showing you blueprint No. 2-1 and will ask you if these two columns you testified about were as far apart as these two columns here [indicating]?

A. I wouldn't like to say, because I can't locate it in my mind without referring to my records.

X Q. 867. Then you haven't testified about the distance between the two columns?

A. No; no.

X Q. 868. And the size of those columns?

A. No.

X Q. 869. That drawing isn't intended to be to scale?

A. No; of course not.

X Q. 870. Now, in the progress photographs, will you explain to the Commissioner the custom in that connection of taking progress photographs of a job?

A. They are taken monthly.

X Q. 871. Who selects the spot at which they are taken?

A. Well, the superintendent for the Government and the contractor, together; they reach an agreement.

X Q. 872. When you take a photograph of form work, for example, it is taken just before—

A. It is taken at any time during or just before the floor slab is poured. Those are intermediate photographs.

X Q. 873. In other words, you want on record the appearance of the forms before the concrete is poured?

A. The appearance of the forms and the placing of the reinforcing steel, before the concrete is placed.

X Q. 874. I hand you Plaintiff's Exhibit 9, which is the plot plan No. 1, and I would like for you to indicate on that map the location of your field office at the job?

A. We had two locations.

X Q. 875. I mean the Government field office?

A. Yes, sir; we had two locations. We moved the office. Which one, the first location or the second one?

X Q. 876. When was it moved?

A. During the construction period; I don't recall the exact date.

X Q. 877. Suppose you indicate the location of the first field office?

A. The location was right in here somewhere [indicating].

X Q. 878. Now, with your permission, I will put a "1" and a circle around it, to identify it?

A. It is in that area there [indicating], but it isn't to scale.

X Q. 879. Now, I didn't intend it to be; just the general location. Where was it moved next?

A. Right about here [indicating].

X Q. 880. With your permission, I will mark it with this red pencil and put a "2" in a circle. Does this plan have a scale, showing the distance from place to place on it?

A. It should have; yes, sir; right here [indicating].

Mr. JULICHER. May I suggest that the record does not show that those indications that were put in, were placed according to scale, necessarily.

Mr. KILPATRICK. The record may show that.

Mr. JULICHER. They were just the approximate distances.

Mr. KILPATRICK. The approximate locations; yes; not intended to be the exact locations, or the exact size, but simply approximations.

X Q. 888. Now, I call your attention again to Plaintiff's Exhibit 37, your progress report as of January 31, 1934, and ask you if you did not state therein that the samples were overdue one month?

A. Yes.

X Q. 889. Will you tell us what samples, under the contract, should have been furnished on January 1, which would be one month?

A. Those samples were not submitted to the field office, only after being approved by Central Office. Those samples are forwarded to Central Office here in Washington, they are approved, and
943 then forwarded to the field office. We have nothing whatever to do with the approval of samples, and the samples are slow coming to us. Whether they were slow going to Central Office, I would be unable to state.

X Q. 890. Well, you do state there that the samples are overdue one month?

A. They appeared slow coming to us; yes.

X Q. 891. One month overdue?

A. Well, approximately one month.

X Q. 892. What samples should have been in your hands by the first of January, which would be one month before the date of that report?

A. Well, a sample of the sand and a sample of the cement, which should have been sent in for the purpose of testing, and brick, lime, mortar.

X Q. 893. Those should have been there on January 1, under the contract, when the contractor was not required to start until December 29; is that right?

A. This is January 31 you are giving me, sir?

X Q. 894. Yes; and you say they are overdue one month?

A. Six weeks; yes, sir.

X Q. 895. You say the samples are overdue one month?

A. Yes, sir.

X Q. 896. And he wasn't required, under his contract, to start work until December 29; but you say that, under the contract, there were some samples that should have been in your hands on
January 1?

944 A. No; they should have been at Central Office, and Central Office would have notified me. They were slow coming to me. They might have been sent in to Central Office, and there approved or disapproved, but they didn't arrive on the job. I don't know what samples had been submitted?

X Q. 897. Now, calling your attention to the report of February 15, 1934, and ask you, in that report, to indicate what samples are overdue? I ask you if it does not state that samples are overdue two months?

A. Yes, sir.

X Q. 898. Two months prior to February 15 would have been December 15, wouldn't it?

A. Yes.

X Q. 899. That was four days before Mr. Blair was given notice to proceed, wasn't it?

A. Yes.

X Q. 900. Well, do you think that, under this contract, any samples should have been furnished by him on December 15, 1933?

A. That possibly was an error there, sir.

X Q. 901. Well, it isn't intended to be criticism of Mr. Blair as to being slow in furnishing samples?

A. No, sir; of course not.

945 X Q. 902. Mr. Blair sent you copies of all of the letters he wrote Central Office on the subject of samples, didn't he?

A. I don't recall whether I got them all, or not. I possibly got some, but not all of them. In fact, I was not particularly interested in them.

X Q. 903. Now, in your report, you apparently rendered a separate report on the radial brick chimney, February 1, that indicated that the sample of the radial brick was overdue by one month, doesn't it?

A. Yes, sir.

X Q. 904. Which would have meant that it should have been furnished January 1?

A. Yes, sir.

X Q. 905. Any indication that, under the contract, Mr. Blair should have furnished samples of radial brick by the first of January?

A. As I stated before, that might be an error in there, because very little attention was paid in the field office to samples until they were received on the job.

X Q. 906. Wasn't it your job to find out why the samples were being delayed, if they were being delayed, and to report to Central Office?

A. There is correspondence in the file, sir, where
946 I invited Central Office's attention to it, and I have always requested a contractor to send his samples in at the earliest possible date, because some of those samples have to go to the Bureau of Standards to be tested and, therefore, cause some delay.

Mr. KILPATRICK. That is all.

Redirect examination by Mr. JULIHER:

R. D. Q. 907. Regarding that sample that you reported two months ahead and which counsel for the plaintiff pointed out was, therefore, to be delivered before the contract was entered into, can you tell me whether there is any instance where there

are any samples, at all, submitted between the Government and a contractor before the contract is signed; that is, in the middle of the negotiations?

A. I know of several instances where samples have been submitted after the bids were opened, prior to the date of notifying them to proceed; several instances.

R. D. Q. 908. Well, do you know of any instance when the samples were exchanged between the time the contract was accepted and the notice to proceed was given?

A. Oh, yes, sir.

R. D. Q. 909. I gather from your testimony that you don't remember that this was the case here?

A. No; I do not.

947 R. D. Q. 910. Captain Feltham, what was the quality of the inspection force you had on the job?

A. The quality?

R. D. Q. 911. The quality; yes; not the quantity, but the quality?

A. Well, I think they were very capable men.

R. D. Q. 912. Didn't you feel that they were able to take care of all of the inspections necessary to this job?

A. Well, ordinarily; yes, sir.

R. D. Q. 913. Why do you say "ordinarily; yes, sir?" Was there anything extraordinary about the job?

A. Yes; because we never knew where our contractor was going to work the next day. There was an occasion when the foreman or subforeman was taking scaffolding from one building to another; in other words, robbing one building of scaffolding material, which of course delayed that building until they could get it back again; and the work was going on all over the ground; and particularly if a man was placing concrete, he was more familiar with the placing of concrete and seemed to have an interest at heart. We had ample forces to take care of this work.

R. D. Q. 914. Captain Feltham, can you state what kind of force the Blair Company had on the job, with reference to mutual cooperation among themselves?

A. The office organization—

948 R. D. Q. 915. Not the employees, but Blair's organization, which was the foremen and superintendents and various grades of superintendents, excluding the actual workmen, the laborers; in other words, I mean the administrative organization.

A. Well, the different foremen and superintendents were complaining to me daily about the other fellows not knowing what to do, or where they were going to work, and the organization.

was lacking a head. For instance, Mr. Andrews, in coming to Roanoke, came to my office and advised me that he came to take charge of the work; but Mr. Roberts, the present superintendent at that time, refused to turn the job over to him, and he was assigned to take care of the hardware, which was delivered on the job, instead of being in actual charge of the whole project.

R. D. Q. 916. Would that have some bearing on the meeting that was called by Mr. Roberts on April 27?

A. No, sir.

R. D. Q. 917. On cross-examination, you had occasion to compare the progress of the Blair organization with the Redmon organization on June 29. The exact figures were 6 and a fraction against 21—6.3 percent as against 27.1 percent?

A. Yes, sir.

R. D. Q. 918. On June 27, that was the amount of work completed by the respective contractors, general and mechanical. In your opinion, is that a favorable comparison? Would you
949 say, from those figures, that the mechanical-equipment contractor was abreast of the work performed up to that date by the Blair Company?

A. I should say so; yes, sir.

R. D. Q. 919. What do you base that calculation on?

A. Because a part of the percentage of the work given to the general contractor was a part of the general grading and in no way was connected with the mechanical contractor. You have to take the percentage of that 27.1 and estimate the percentage of the work that Blair had accomplished, whereby the mechanical contractor could go to work. The other was outside of and away from the mechanical contractor's contract or work.

R. D. Q. 920. Previously you stated, by referring to your records, that on March 31, or April 1, the plaintiff contractor had completed about 5 percent of the job. Could you state how much of that was grading?

A. 5 percent of the job? Oh, 2½ percent, maybe 3 percent, but not more than 3 percent.

R. D. Q. 921. On what source of information did you base the letters advising of the nonappearance of the Redmon Company's representative, and the necessity for his appearance?

A. Well, that is customary on any job, to assist the other contractors to proceed at the earliest possible date with their
950 work. That is done practically in every case. Whenever I have had charge of a job, if a contractor—even before I knew of their doing any work whatever, I usually write them and keep behind them, so they will be prepared to execute the work when the time comes.

R. D. Q. 922. At that time, had the contractor submitted an anticipated progress schedule of any kind?

A. No, sir; not at that date.

By Mr. KILPATRICK:

R. D. Q. 923. Not at what date?

A. Not on that date.

R. D. Q. 924. What date was that?

Mr. JULICHER. That was at the beginning of the work.

The WITNESS. Early in January.

By Mr. JULICHER:

R. D. Q. 925. Can you tell, from your records, on what date the plaintiff contractor actually got his excavating and grading machinery on the job?

A. It was right after January 15, and the actual work was started the 16th. If I remember correctly, my records state that they moved some 300 yards that week. I wasn't on the site at the time; Mr. Dodd was representing the administration.

R. D. Q. 926. Did you see this letter, forwarding the attached paper to Algernon Blair?

A. Yes, sir.

951 Mr. JULICHER. I offer this as Defendant's Exhibit BB.

Mr. KILPATRICK. We object as constituting hearsay as to the affidavit. We do not mind it appearing that Captain Feltham sent to Mr. Blair, on this date, an affidavit by an employee that Mr. Blair had violated the contract. We do not want that contract in evidence, because we have no opportunity to cross-examine the employee.

The COMMISSIONER. I do not think the affidavit is evidence, as far as this case is concerned. The letter suggesting the violation, or the accompanying papers supporting it, may possibly be admissible; but as far as the affidavit is concerned, there is no chance of corroboration or cross-examination or testing its virtue.

Mr. JULICHER. May I make a statement before you rule on it, please?

The COMMISSIONER. Yes.

Mr. JULICHER. The affidavit is not offered as evidence of the violation. The entire document is merely offered to show that the Government did advise the plaintiff contractor of the complaints that it was receiving, and forwarded the same to the plaintiff for whatever action it may be necessary to correct the condition.

Mr. KILPATRICK. I do not see what issue in this case it bears on.

952 The COMMISSIONER. Well, I suppose the purpose of it is to show that there was scrutiny by the Government inspec-

tors of the labor conditions on the job; and that, at least in one instance, it was reported that there was a violation of the existing labor conditions. I imagine that is the purpose.

Mr. JULICHER. Then, too, your Honor, if you will recall, one of the claims of the plaintiff is that the Government officers or inspectors on the job were arbitrary and unfair in their treatment, and that will tend to show that they were merely upholding the provisions of the specifications and the contract.

Mr. KILPATRICK. I do not think it tends to show that.

The COMMISSIONER. I will allow the affidavit to go in, not as proof of the facts contained therein, but simply the surrounding circumstances, you might say, of the letter of transmittal. I am perfectly firm in my position that it does not prove the facts but simply shows the complaint by the Government inspector to the contractor of the alleged condition.

(Said affidavit, so offered and received in evidence, was marked "Defendant's Exhibit BB" and made a part of this record.)

Mr. JULICHER. The Government excepts, your Honor.

By Mr. JULICHER:

R. D. Q. 927. I show you, Captain Feltham, a letter signed by you, and behind it, a copy of a letter written to you.
953 Did you write and receive those two letters?

A. Yes, sir.

R. D. Q. 928. Did you receive these photographs with it, or did you send those?

A. Those photographs were taken by me.

R. D. Q. 929. And sent to whom?

A. And sent to Central Office for their information.

Mr. JULICHER. I offer this as Defendant's Exhibit CC.

Mr. KILPATRICK. No objection.

The COMMISSIONER. Received and marked by the reporter as "Defendant's Exhibit CC."

(Said letters, so offered and received in evidence, were marked "Defendant's Exhibit CC" and made a part of this record.)

Mr. JULICHER. If your Honor please, with reference to this wages-and-labor dispute, we have a number of letters written by various district managers of the United States Department of Labor at Lynchburg, Roanoke, and a number of other Virginia towns. If we were to attempt to introduce those letters, we know they would be objected to, and properly so, because there would not be any chance for cross-examination. However, if it is necessary for us to call all of those people in to testify, it will necessarily lengthen the case. So I only ask that plaintiff's counsel look these letters over and see how he feels about them.

954 The COMMISSIONER. I think you can anticipate his feeling.

Mr. JULICHER. I understand he is also anxious to get this case concluded.

The COMMISSIONER. He might stipulate those letters were sent and received; not as to the accuracy of their contents, but the fact of their having been sent and received. Off the record a moment, now.

(Here followed discussion off the record.)

Mr. KILPATRICK. We are willing to agree that these letters were sent and received at the times indicated, and they may come into evidence with that understanding, without being any proof of the facts stated in the letters.

The COMMISSIONER. I think that would have to be so. As far as I am concerned, I would not receive them as proof of their being original letters, even, unless you identified the man who wrote them and the circumstances concerning them, and also unless you proved further the signature of the gentleman who wrote them and his connection with some established labor organization. There would have to be some identification of it, without such understanding.

Mr. JULICHER. In that case, I think I will hold them.

The COMMISSIONER. It may be necessary for you to call them. I mean, as far as it now stands, there is no proof, at all, of them.

955 By Mr. JULICHER:

R. D. Q. 930. Captain Feltham, do you remember ever having made the statement that any man who uses tools is a mechanic, and should receive the wage of a skilled mechanic?

A. Yes; if he did it continuously. If he might pick up a saw and saw a piece of board, no; but if a man is working all day long with tools, I would term him "a mechanic."

R. D. Q. 931. That is exempting, of course, apprentices?

A. Yes, sir.

Mr. JULICHER. That is all.

Recross-examination by Mr. KILPATRICK:

R. X Q. 932. Then you didn't say that if a man used tools habitually in the day's work, he was entitled to a mechanic's pay?

A. I would term him "a mechanic," yes, if he wasn't listed on your pay roll as an apprentice.

R. X Q. 933. We couldn't change his designation by the listing on the pay roll, could we?

A. There is no reason, that I can understand, sir, why you can't change the designation. If a man was a helper or a skilled

mechanic or a semiskilled mechanic, there is no reason why he should not be so designated on the pay roll.

R. X Q. 934. If we have a man carried on the pay rolls as a laborer—

A. Yes, sir; he should be a laborer.

956 R. X Q. 935. And if he were using tools, would you have said that he was a mechanic, or what?

A. Semiskilled or an apprentice.

Mr. KILPATRICK. No further questions.

(Witness excused.)

958-959 THOMAS G. DODD, a witness produced on behalf of the defendant, testified as follows:

Direct examination by Mr. JULICHER:

Q. 1. Will you give the reporter your name and address and age, please?

A. Thomas G. Dodd; my legal address is Alexandria, Virginia; 41 years old.

Q. 2. Where are you employed at the present time, Mr. Dodd?

A. At the Veterans' Administration.

Q. 3. How long have you been employed with the Veterans' Administration?

A. Since the latter part of 1931, as I recall.

Q. 4. What position are you now employed in?

A. Superintendent of Construction.

Q. 5. Where are you stationed?

A. Amarillo, Texas.

Q. 6. Are you an engineer?

A. I had a 3-year engineering course as a civil engineer.

Q. 7. Where did you go to school?

A. Charlottesville, Virginia.

Q. 8. What experience have you had in construction work?

A. Would you care for me to give it in detail, from the start?

The COMMISSIONER. Do you want to qualify him as an expert, Mr. Julicher, or just give his background?

Mr. JULICHER. Just give a general background of his experience in the construction business.

The WITNESS. Well, I may start off, after completing school, approximately 1918, I was employed by the Ball-Robertson Construction Company of Washington, D. C., and over the period of the following 3 years my duties consisted of being assigned to the field as superintendent of jobs, such as giving elevation lines, checking materials and checking estimates, and various other activities in connection with construction work; and in 1921 I severed my connection with the Ball-Robert-

son Construction Company and went with P. F. Dulaney Engineering Company, of Bridgeport, Ohio, at Morgantown, West Virginia, as superintendent of a bank building at Morgantown, West Virginia, and was employed by them on similar jobs in various sections of the country, up until 1923; and at that time, I severed my connection with them and came to Washington and went with the R. P. Whelty Construction Company, and my duty there was estimating, checking and more of general supervisory capacity of a group of jobs; and in the latter part of 1923, I severed my connection with Mr. Whelty and went with Charles H. Duncan Construction Company, a local concern, and was employed in a supervisory capacity on several buildings, the telephone building and various different apartment houses.

In 1924, I competed in a Civil Service examination as engineer inspector, and as I recall it now, I think I was No. 3 on the list, and was appointed to the Army Engineer office in the Munitions Building down here, and was assigned to the District water plant, what is known as the Dalecarlia filtration plant, and a tunnel approximately 12 x 12 feet in diameter extending from the Dalecarlia plant to Great Falls, a distance of 8 or 9 miles, as I recall, and also another tunnel from there, which, in some cases, was underground as much as 95 feet; and I was employed there as engineer inspector, my duties consisting of inspecting concrete reinforcing steel, carpenter work, brickwork, excavation, tunnel blasting and various other things in connection with it. That project ran into some \$4,000,000, approximately.

961 Upon the completion of that project, I was transferred to the Army Engineer School at Fort Humphrey, Virginia, as inspector on several large barracks and some quarters, and along with what we consider our purchase and hire work, in which we purchase our own material and hire our own labor.

After the completion of this particular project, I was then transferred to Walter Reed Hospital in the capacity of inspector and engineer on several buildings, which I don't recall just now, but we had some five or six contracts of various sizes in operation at the time; and at the completion, I was transferred to Bowling Field, the Army Air Station, and I supervised, under the purchase and hire basis, the installation of a water tunnel down through the ground and roads and the addition for new hangars, and some underground electrical installation for the landing field; and after the completion of that, I was again transferred back to Fort Humphrey on several large barracks, and stayed there until the completion of that job, when I was transferred to Langley Field, the general headquarters of the Army air base; and at that time, we 27 inspectors on the ground, and I was senior inspector in

charge of the 27, and we had, as I recall it, some \$9,000,000 on contract with several contractors—I couldn't recall just the number now, but at least 15 general contractors employed on the field.

And from that station I was transferred to the Veterans' Administration, from the Army Service to the Veterans' Administration, and was placed on the job of Veterans' Hospital at Columbia, South Carolina. On the completion of that, I was transferred to a similar project at Augusta, Maine, along with a considerable amount of purchase and hire work, which I supervised. From Augusta, Maine, I was transferred up to Roanoke, Virginia. This is up to the time I started at Roanoke.

Q. 9. Where were you during the latter part of 1933, the entire year '34, and the forepart of 1935?

A. At Roanoke, Virginia.

Q. 10. In what capacity were you employed there?

A. As assistant to the supervising superintendent of construction, Captain P. M. Feltham.

Q. 11. Were you on the job continuously?

A. I was assigned continuously. I would say, at various times, I may have been on leave to come home. My home is in Alexandria. I might get off Saturday morning, or something like that, but I wasn't off of the job at no time in excess of two days during the life of the contract.

Q. 16. You say you arrived at Roanoke on what date?

A. December 7.

Q. 17. Did you immediately go out to the site where the hospital was to be built?

A. Not the day of my arrival because that was quite late in the afternoon when I arrived, but I did the first thing the following morning.

Q. 18. How far is the hospital from the city of Roanoke?

A. As well as I can recall now, from the Post Office it was 4¼ miles, as well as I can recall.

Q. 19. It is outside of the city of Roanoke?

Q. 22. Are you able to tell me when any member of the contractor's staff arrived on the job?

A. I can, if I may be allowed to refresh my memory from the report.

Q. 23. Do that.

A. The first arrival of the first representative, or the main one, Mr. Lacey, was as of December 19, our records show.

Q. 27. Can you tell what happened, what was doing on the site on December 29?

A. December 29 was a Friday. There were 4 men on the job, locating the building lines; a total of 4 men locating the building lines.

Q. 28. Do you recall whether or not there was any equipment there?

A. There was no equipment, other than a few men and one transit or level. * * *

Q. 29. Surveying equipment?

A. Surveying instruments on the job, at the time.

Q. 32. Now, on January 2, what was going on on the site?

A. We have listed as one superintendent, which I presume is Mr. Roberts, and two engineers, locating the building lines, and five carpenters and two laborers erecting the temporary sheds and field offices.

Q. 33. Was that the field office for the Government or the field office for the contractor?

A. It doesn't distinctly state here, but I presume it would be—the word being plural, I presume it would be both.

Q. 34. Now, can you say, of your own knowledge, whether or not there was any heavy equipment there in preparation for—

A. No, there was no heavy equipment that I remember.
966 I do recall the approximate date that it came in, because we broke ground the next day after the shovel arrived. * * *

Q. 37. Well, look and see, as to February 1, what the first indication is of the amount of dirt moved.

A. The first one would be February 2, and it states in the log that the general excavation was a power shovel and four trucks. That is the nearest I could get. That could be estimated approximately.

Q. 38. Look at February 16.

A. Friday, February 16, it still doesn't indicate. It says, "1,000 yards of dirt removed as of this date." That I couldn't state definitely, as to whether that would be interpreted as being removed as of the date, February 16, or that much prior to and including that date. I couldn't distinguish that definitely, between them.

Q. 39. Well, do you remember whether or not the contractor made normal progress in the first three months, or would you say he was slow?

A. Yes; I would say he was slow, in view of the fact that he didn't get any concrete poured—our first concrete was poured, as I recall it, approximately March 12, which is an unusual

amount of elapsed time for the first concrete to be poured on a project of this description and magnitude.

Q. 40. Do you recall that the contractor, Blair, ever submitted an anticipated progress schedule, showing that he intended to complete the entire job by November 1?

967 A. At no time do I remember or ever recall of seeing any such document of that description. In fact, I had never, up until the time that this case was in—this claim was entered, and I was advised of the claim and, in fact, read some of the testimony, did I know that they even contemplated the completing of this project by November 1.

Q. 41. Do you recall how much time the contract provided?

A. 420 days, as I recall it now. I would have to look at the contract, but approximately 420 days, as I recall.

Q. 42. Are you able to say how much work the general contractor would have to do, before it became necessary for the heating contractor to be on the job?

A. As to the percentage of the work, would you mean?

Q. 43. Well, you can make it the percentage, yes?

A. There would be several figures entering into that problem.

Q. 44. I am talking about this particular job?

A. Well, this job, in view of the fact, if I may state it—it would be possible for the contractor to go in there and do all of his excavating, general, and grading, which would naturally tend to hold the mechanical contractor back; and by doing all of his general and other excavating, except his fine grading, that would, in turn, raise the percentage of his contract and not give the mechanical contractor a chance to install anything whatever.

That could enter into it.

968 Q. 45. You say not give him a chance; not make it necessary, you mean?

A. Not make it necessary, and furthermore, not make it possible for him to install any of his equipment.

Q. 46. There wouldn't be any work for him to do, you mean?

A. No; not in the event that method of starting the jobs was elected by the contractor, it would not; no.

Q. 47. Do you know that you, or any other Government officer, at any time, attempted to control the method of prosecution of this work by the contractor?

A. No; we wasn't—I didn't see any other Government representative that was interested in the method the contractor used. That is one of his prerogatives.

Q. 48. Were you the superintendent on this job?

A. No; I was assistant to Captain Feltham. In other words, we were assigned at different times. If the work is scarce, they may bunch up a bunch of men.

Q. 49. Suppose Captain Feltham was off of the job, were you next in command?

A. I was in charge; yes.

Q. 50. Did you dictate letters for Captain Feltham's signature?

A. I did, sir, at such times as he was on the ground, and other times, it became necessary to write letters, I signed them myself.

Q. 51. Did you dictate any letters advising Central Office that it was necessary that the Redmon Company have someone on the job?

969 A. I couldn't recall now. I may have. I would have to refresh my memory, but I have a faint idea or recollection of dictating a letter on one occasion, in view of the fact that the general contractor had advised our office that they contemplated certain progress; and I knew that, in the event that progress was made as contemplated by the general contractor, it would be necessary for the mechanical outfit, which was the Redmon Heating Company, to have a representative on the job site for the purpose of installing sleeves and inserts. I know if I didn't dictate it, I participated in the discussion along that line with others there.

Q. 52. This is a letter taken from Plaintiff's Exhibit 42, written by you, bearing your signature under that of Captain Feltham's, the letter being dated January 25, 1934?

A. Yes; I signed this.

Q. 53. I note that that letter requests that a representative of the Redmon Company come on the job, or be on the job?

A. Yes, sir.

Q. 54. What information did you have in your possession that necessitated the writing of that letter?

A. I stated in the letter that the general contractor "Algermon Blair now has the excavation for the boiler house and utility building, storehouse, garage and attendants' quarters nearly completed. The writer was advised by the general contractor on this date"—

Q. 55. By whom?

A. January 25. I don't recall distinctly by whom, but "The writer was advised by the general contractor on this date
970 that his intention is to place the concrete immediately after receipt of approval of concrete material, which is now pending in Central Office." At that time, approval of the concrete aggregate had not been made by Central Office. Therefore, if he had been ready, the general contractor would not have been permitted to pour the concrete until such time as approval was received from Central Office. So the necessity of the general contractor—of the mechanical contract, at this time, being on

the job site, was merely pending the pouring of the concrete of the general contractor, which, at this time, is evidence that it could not be poured, due to the fact that he did not have his material approved.

Q. 56. That you were writing that upon information received from the contractor that he anticipated doing certain work?

A. That is right.

Q. 57. Do you remember whether or not he performed the work anticipated?

A. I would have to refer to the schedule, but I may state this: That sometime after the date of this we did receive—over a period of approximately three months, I don't know just definitely, but we did receive from the general contractor's superintendent a schedule which he proposed to—the work he proposed to execute in the following week, and in no instance can I recall of anyone that was completely adhered to in its entirety.

971 Q. 58. You mean the schedule broke down?

A. Broke down in every instance that I can recall.

Q. 59. Mr. Dodd, do you recall any instance when the Redmon Company delayed the general contractor; I mean an appreciable delay, a real delay that would be reported?

A. I don't recall any instance when the Redmon Heating Company did delay the general contractor, Algernon Blair, other than that ordinarily caused on the average type job; job of that type.

Q. 60. Do you recall that the general contractor ever delayed the Redmon Company?

A. Well, there was some instance—I remember a particular instance when the contractor was to furnish some—I believe some equipment in the way of laboratory equipment, as I recall it now, general laboratory equipment, and the mechanical contractor required roughing in of certain type of equipment there, which he did not have. I recall that, but that wasn't a delay of any consequence, which wasn't encountered in any construction job of that type.

Q. 61. Will you look at your daily log for May 2? What does that log show with reference to delays on that date, if anything?

A. Here is an item in here under the Redmon contract, which states in part, "About 4:00 p. m. Mr. White and Mr. Dodd looked over the basement floor on Building No. 16, to see what progress was being made in placing steel. The steel man stated that he would be complete about 4:30 and a foreman said that he had orders to get out at 6:30 in the morning to get the floor

972 ready to start pouring by 7:30 a. m. White immediately called their attention to the fact that feeder conduits had to be placed over the steel and stated that it would take from

9 to 3 hours to install such conduits. He reported the matter to "this office"—which was the office of the supervising superintendent of construction—"at 4:15. Capt. Feltham immediately notified C. W. Roberts that floor would not be poured until the Redmon Co. had had proper time to complete their work. Roberts then entered complaint that Redmon was holding him up by not locating conduits and downspout boxes as were necessary to Bldg. #14 until immediately prior to the time concrete was to be poured."

Q. 62. What do you find on May 9?

A. On the Redmon Company, it states at the end of the day's log: "The above were all the men which could be worked under this contract in view of the condition of the general contractor's work."

Q. 63. Did you ever have any trouble, any personal trouble with the inspectors, superintendents, working for the Algernon Blair Company?

A. With the Algernon Blair Company superintendents?

Q. 64. Yes!

A. Any personal trouble?

Q. 65. Yes!

A. No; I had no personal trouble.

Q. 66. Did you have any difficulties with reference to the job?

A. I did have various problems of official duty, but no personal duty.

Q. 67. Did they ever accuse you, personally, of being unfair to them?

973 A. Not in my presence, but in other—it came to me from various sources that it was being rumored around that I was; not personally, no; not in my presence, no.

Q. 68. Do you know whether the contractor ever ran more than one shift a day on this job?

A. It appears to me that he did, in some instances, in the grading, that he may have had a double shift of truck drivers and shovel operators. I couldn't say definitely, without going back over the records, but as well as I can recall at present, he did, in one instance there, have some truck drivers and shovel operators doubling up on a double shift, a short shift of 6 hours, as I recall it.

Q. 69. Do you recall that he pushed any of the construction work excessively?

A. No; I couldn't recall of any particular instance when the construction of the project was pushed in excess.

Q. 70. Did any official of the Blair outfit ever tell you that they were trying to finish this job by November 1?

A. At no time; no, sir.

Q. 71. Do you recall whether all of the work on this job was finished by February 14, 1935?

A. The job was esteemed as being substantially completed. There were certain items, under the terms of the contract, which may be corrected.

Q. 72. Were the buildings accepted?

974 A. They were accepted as of completion of the final inspection report, whichever date it bears. However, there was considerable items not completed. In fact, I was at the station after its final inspection report, and had acted as utility officer and superintendent of construction, and I stayed until the utility officer was transferred in from Iowa and got familiar with the facility and the mechanical equipment, and the boiler plant, and whatnot, and he had taken up—when he had taken up some 6 weeks afterwards, there were items that I hadn't turned over to him, that were yet not completed.

Q. 73. How long after February 14 were you at that job?

A. As I recall it, I was there until April—it was either the second or the fourteenth. I couldn't recall the exact date, but I do know I arrived at Gulfport, Mississippi, on the nineteenth and I had not been long left for Atlanta, Georgia—I drove down and had not been long left Roanoke.

Q. 74. Mr. Dodd, what was your impression of the efficiency of the Blair organization on the job at the time?

A. Well, personally, from a personal standpoint, I couldn't say that the efficiency was what could be expected of an organization performing a contract of that magnitude, and from past experience, from general contractors which I have contacted and inspected work for, I wouldn't say that it was up to par from an efficiency standpoint; from past experience of other contractors, which, in some instances, was large and some small types of contract.

Q. 75. Then the plaintiff contractor had plenty of help on the job at all times?

975 A. There appeared to be ample help at all times.

Q. 76. Would you say it was overmanned?

A. In some instances, from the standpoint of observation from that contract and others which I have been on, I would say that the supervisory force was in excess of the requirements of the job. There was considerable overlapping of various types of foremen.

Q. 77. Did you come in contact with Mr. Roberts?

A. I did, considerably; yes.

Q. 78. Did you, at any time, have any difficulty or disagreement with him over the job, over the way the work was progressing?

A. Well, there was considerable discussion, and if you mean were there disagreements—if I found occasions where he wasn't com-

plying with the contractor, I endeavored to call him on it, whether it was such as testing or suitable work done, or not. That was in my official capacity as inspector of the job, Government inspector on the job.

Q. 79. Did you ever require any more than the specifications called for of the contractor?

A. I have not been able to find in any instance where I did; no.

Q. 80. Did the contractor's superintendents ever accuse you of requiring more—

A. As I said before, I never had anything in a letter form, or anything in my presence, but it is hearsay.

976 Q. 81. You were on the job all of the time, and you would naturally run into it, if there were any accusations, wouldn't you?

A. Well, I would, surely. But as I said before here, I never heard of it; never, at any time, in my presence, they make accusations that I was unfair—that I was requiring him to do more than the contract requirements.

Q. 82. Let me ask you this, then: Did the contractor ever attempt to give less than the specifications called for?

A. In instances, yes.

Q. 83. Did they ever attempt to short cut in any way?

A. That depends on what you would term a short cut. In many instances, we would inspect a job, and the forms would not be built properly, and the steel wouldn't be placed properly, and the brick wouldn't be wet properly, and various items that, if you term that as short cutting the job, then it was. There was, as I recall it now, considerable amount of various types of installation of various types of work rejected, because of the fact that it didn't comply with the contract requirements.

Q. 84. Was there any difficulty about cleaning the reinforcing steel?

A. I do recall a difficulty on several occasions there; yes, sir.

Q. 85. What was the cause of it?

A. Well, the first instance, the first difficulty we had in that line was at the time that you were pouring the columns.
977 Your column steel extends, in most instances, I think, 3 feet 6 inches above the rough floor slab, as I recall it, and in pouring the concrete around these column bars they would get coated with concrete and grout, which would naturally dry, and before pouring additional concrete around those column bars, it was necessary—not only necessary but good practice and required to remove the grouting, which was a thin coating on the steel, which prohibited the bonding of the fresh poured concrete.

Q. 86. Do you recall any complaint or difficulty about jack arches?

A. I can't recall them definitely, right offhand. That has been quite a while ago.

Q. 87. What is a jack arch?

A. A jack arch, as commonly termed, is a flat-bottom arch. There are two types. You have a soldier cross—what is known as a soldier cross, with the brick on end, and you have a brick sitting on a batter on a slant, an angle, otherwise.

Q. 88. Here is a question by Mr. Ball, which was asked of Mr. Roberts on page 323. He is talking about the difficulties that the plaintiff was supposed to be having with the Government inspectors. He says:

“* * * What about the jack arches required and the conversation that ensued?

“A. That demand wasn't carried out, but we was pushed, and I was told at the time that if I didn't carry it out. I would
978 be very sorry of it. On all the windows in the rubblestone in the basement, our contract required stone lintels, which consist of plain stone 12 inches wide and enough length to span over the opening, and when we built our sample that was presented here this morning, Captain Feltham made a very strenuous request of me that I make these arches out of jack arches and asked me would I do it. I told him at the time I would investigate it, and if I could do it without additional cost, and he had authority to change the contract, I would be glad to do it. I did investigate the matter with Mr. Wilson. I found that it was practically impossible to get the stones of the composition, shape and weight, and, therefore, I made no further attempt about it; and when I built this, he objected strenuously to carrying the square arch out and said I had already agreed to do it, that I would surely carry out my agreement, or he would make me wish that I had carried it out.” Do you recall that?

A. I recall the discussion relative to the lintels for the first floor, between the first floor and the finished grade; and at this time, this particular time the discussion came up relative to the stone lintels, the contractor stated that it wasn't possible for him to get out lintels of this dimension, and Captain Feltham merely suggested that he get these lintels out in three pieces, with the key in the center of it, for the purpose of facilitating the quarrying of the stone in the smaller pieces in lieu of the larger ones, which the contractor claimed it wasn't possible for him to get out at
979 the time, but afterwards he did acquire the stone and place it. ✓

Q. 89. I believe that part of it isn't competent. What I am getting at mostly is, did you, or do you know whether Captain

Feltham did, ever make any threats of the kind just read to the contractor?

A. Not in my presence, at no time.

Q. 90. Did you ever say to the contractor, "You better had, or else?"

A. No, sir. Mr. Roberts, the general superintendent on the job, was a very nervous type of person, and it was rarely I could ever get him to stand still long enough to carry on a conversation. He was either chewing his gum, or whittling on a stick and it was rarely I could ever get him to engage in a conversation long enough to arrive at any actual determination of any facts. I think Captain Feltham will bear me out; and especially so at such times as his wife was sick in the hospital, because he seemed to be very much disturbed at that time, and he was going to and fro every day between the job site and the hospital in Roanoke, and he appeared to me to be very much upset, and from all indications through the project, he did. In some cases, it wasn't as bad as others, but he appeared to be an unusually nervous type of person; from what cause, I couldn't say.

Q. 91. You are aware, I believe, that the plaintiff states that you were very arbitrary and capricious and unjust in your requirements of the contractor in the building of this veterans facility. Now, can you recall any instance when you might
980 have been arbitrary, or you might have required any more than the specifications called for?

A. At no instance can I recall any such decision, or otherwise. In some cases, that statement would merely be that of an opinion. See? That may have been his opinion, but on the other hand, I was performing the duties required under my employment with the Veterans' Administration.

Q. 92. You did insist on—

A. On him complying with the contract requirements. Now, if that was being in the terms which you just stated, why, I did. Mr. Roberts had taken a considerable amount of decisions handed down from the supervising superintendent of construction's office, from all indications, I should say, as personal—not as official, but they appeared in every instance as being taken by him personally. There was nothing personal to me.

Q. 93. Personal criticism?

A. Yes; there was nothing personal about me. I never met Mr. Roberts before I went to Roanoke, and I think I had seen him one time since then. I had heard once or twice of the Blair concern, but I had never been in contact with them prior to going to Roanoke. So I had no personal grievance, not before going, or while there, nor since leaving Roanoke, against Mr. Roberts or

the Algernon Blair Company. I was merely discharging my duties at such times as occasion arose.

Q. 94. Mr. Dodd, do you recall whether or not the plaintiff suffered any delay by reason of the failure of material to be delivered on time?

A. The general contractor?

Q. 95. Yes?

A. Yes, I do.

Q. 96. What kind of material was he lacking, at times?

A. From May 8, through to June 16, inclusive, the record shows that there was no form lumber for Building No. 6; and on May 10, there was also no form lumber for Buildings 16 and 18. May 11, there was no form lumber for Buildings 5 and 18; and on May 22, there was no form lumber for Building 5, also. May 23, no form lumber for 5; and on May 24, and on June 19, there was no form lumber. The first form lumber that was erected on Building No. 6 was June 23, 1934.

Q. 97. This form lumber which you speak of—what was it used for?

A. Well, it was used for forming the territory for pouring the concrete, of holding the concrete.

Q. 98. Building forms in which to pour the concrete?

A. That is right. And from general observation of the job, it appeared that there was an effort made to complete the concrete work on certain of the large buildings, in order to enable the general contractor to remove the used forms from those buildings and reuse it for Buildings 5 and 6.

Q. 99. Do you recall whether or not, under the specifications, the plaintiff was permitted to reuse the form lumber?

A. He was, absolutely, provided it was in proper condition.

Q. 100. Who was to decide whether or not it was in the proper condition?

A. Well, that would be a matter between the Government official in charge, in coordination with the contractor.

Q. 101. Well, suppose the contractor said, "Well, I think this lumber is suitable to be reused again," and the Government inspector said, "No, I don't think so. I think it is a little bit warped here, or warped there."

A. Under the terms of the contract, the Government official's decision would have the control, unless he appealed to the contracting officer through that office, which he, at all times, had a right to do. In other words, he wouldn't have been permitted to use that form lumber until such time as he made an appeal to the Director of Construction; and naturally our office, which

"was the supervising superintendent of construction's office, and also his, would have abided by that. But it is a fact that form lumber was used from the other buildings on these two buildings, namely, 5 and 6, removed from the other buildings.

Q. 102. Did you make inspection of the concrete that was poured by the contractor?

A. I did; yes.

Q. 103. When did you make these inspections—after the forming was removed, or before or during—

A. No; we ordinarily endeavored to be around at different intervals during the pouring. We had a foreman at the point of delivery to the forms, and we also had one at the mixing point, and at different intervals during the day of pouring, either Captain Feltham or myself would visit the point pouring to ascertain what the conditions there may have been.

Q. 104. Where was most of the concrete mixed?

A. At the central mixing plant over near the residential group.

Q. 105. You had a central mixing plant to mix this concrete?

A. Yes, sir.

Q. 106. You also had a portable mixer; is that true?

A. Yes; we did.

983-985 Q. 107. Now, when you would mix this concrete in the central mixing plant, how far did you have to haul it?

A. I would say approximately three-fourths of a mile, and in some instances as much as a mile or maybe more.

Q. 108. How did you haul it?

A. It was hauled in a hopper bed truck, a steel bed dump truck.

Q. 109. Did you have a man at the mixer to check the measurements as it was mixed?

A. We did, and we had a ticket system, whereby we had a specification stipulating that any concrete mixed in excess of 40 minutes would not be incorporated in the work; and therefore we initiated a system of making tickets at the mixing plant. In other words, our man at the mixing plant would not only check the measurements of the concrete, but at the time it was dumped from the mixer, a ticket was made out and signed by him, with the time that it was delivered from the mixer, and when that truck did turn up at the job site, he could take his watch out and see what time it was, and any concrete that had been in transit in excess of 40 minutes, he was required to dispose of it in any other method, except incorporating it in the building.

986-987 Q. 110. Suppose you had a batch that had been mixed for 41 minutes, would that make any difference?

A. Well; it is generally assumed that, if the concrete looks good, you will use some common judgment in inspecting. You can't, in

every instance—I have never attempted to require a contractor to literally comply with the specifications, because it is not only not practical to do it, to comply with the specifications and drawings 100 percent—I don't think that has been done or is being done. I can't recall of any job over the past approximately 15 years I have been in the Government service that I have ever known a job that was complied with by the contractor literally 100 percent. That isn't customary.

Q. 111. What kind of concrete did you find the contractor had poured, when the forms had been removed?

A. Well, we found some good class of concrete and some unusually poor.

Q. 112. Unusually poor?

A. Yes, sir.

Q. 113. What, specifically, do you mean by that?

A. Well, it was what we in the building business as we term it, is honeycombed, it is porous, and that come from various types of leaky forms, forms not built correctly and tight to hold the grout, and improper placing, improper spading and vibration, and improper mixture. Any one of those items would constitute that condition.

Mr. JULICHER. At this time, I would like to withdraw Mr. Dodd for the purpose of putting on Mr. Fahy, who is rather ill, so that it will not be necessary for him to wait around, sit around and wait until we finish with Mr. Dodd, if that is all right with counsel and the Court.

The COMMISSIONER. If there is no objection, you may proceed.

Mr. KILPATRICK. No objection.

Q. 1. Will you give the reporter your name, address, and age, please?

A. Joseph A. Fahy, 2955 Twenty-eighth Street NW., Washington, D. C.; age, 56.

Q. 2. Where are you employed?

A. Veterans' Administration, Construction Service.

Q. 3. How long have you been employed there?

A. About 15 years.

Q. 4. What are your official duties?

A. Well, as present, it is chief of project supervision.

988-990 Q. 5. What do your duties include?

A. They include the supervision of construction work.

Q. 6. What are your qualifications, with reference to inspecting concrete?

A. Well, I am a civil engineer graduate of about 30 years' experience as a civil engineer. About 20 years of that has been in con-

nection with inspection of construction work similar to that which the Veterans' Administration constructs. * * *

Q. 9. Captain Fahy, where were you about May 10, 1934?

A. Well, about that time, I made an inspection of the project at Roanoke, Virginia.

Q. 10. Did you go down there from the Central Office?

A. Yes, sir.

Q. 11. Do you recall whether or not this was a routine inspection, or you were especially sent to make this concrete inspection?

A. It was not a routine inspection. I was sent down especially to make the inspection at that time.

Q. 12. Do you recall the reason?

A. The report was, that they were having some trouble getting the concrete work properly constructed.

Q. 13. When you got down there, what did you find?

A. I covered what I found in a report submitted after my return to the Central Office.

991 Q. 14. I hand you this document and ask you to identify it, please. Is that the report you made?

A. This report is the report that I made.

Q. 15. Bearing your signature?

A. Yes.

Mr. JULICHER. I offer this in evidence as Defendant's Exhibit DD.

Mr. KILPATRICK. No objection.

992 THOMAS G. DODD, who had been previously sworn and had testified, was recalled and was examined and testified as follows:

Direct examination (resumed) by Mr. JULICHER:

Q. 116. Mr. Dodd, did you handle the labor and wages situation on the Roanoke job for the Government?

A. Generally, under the supervising superintendent of construction.

Q. 117. Would you outline, briefly, what your duties were in that connection?

A. Well, such as checking the pay rolls, under the supervision of the contractor. The contractor was required to submit to the Government office copies, in duplicate, of all pay rolls, setting forth thereon the classification of the employes, the hours of duty, the rate of pay, per hour, and the net amount earned and paid. They were audited weekly, and after they were audited by the Government office, they were then forwarded to the United States Reemployment Office at Roanoke, for the purpose of having the Reemployment Office check against the

pay rolls to ascertain if the employes of the contractor shown on that pay roll other than those which were obtained by the contractor from the local union. We issued clearance cards, what was known as clearance cards, on this particular project, which was required under the provisions of the contract; and a checking of the classification and checking the men to see if the men who were classified under some particular classification, for illustration as carpenters—to see that those men were actually performing carpenters' work, and seeing that the labor was not performing work ordinarily required by mechanics, and various items in connection with labor.

Q. 118. Do you recall any difficulty with reference to the reinforcing steel setters?

A. I do, sir; yes.

Q. 119. Will you state just what that amounted to?

A. Well, at the start of the placing of the reinforcing steel by the contractor, the first week, as I recall, he started and was using unskilled labor at a rate of either 5 or 10 cents more per hour than the unskilled labor rate, which I do not recall exactly.

Q. 120. The unskilled labor rate was 45 cents?

A. Yes. There may be instances when he paid some of them up to 60 cents. However, they were taken from the unskilled gang on the construction project, and at the time the contractor submitted his first weekly pay roll for checking, we noticed thereon that they were carried as laborers.

Q. 121. They were carried as laborers?

A. Yes; they were carried as laborers.

Q. 122. And setting steel?

A. At a higher rate of pay than the unskilled labor, however, which, in some instances, was done with the other trades; and the matter was taken up by me with Captain Feltham, and we discussed it, and being an unusual procedure, foreign to anything I had ever known before in connection with projects, where there was an established wage scale provision in the contract. Captain Feltham then, in turn, contacted Central Office, the Washington Office, for a ruling.

The contractor's superintendent and his supervising force there on some several occasions, in discussing the classifications of the reinforcing rodmen, stated, in our office, that it had been the custom of the contractor, Algernon Blair, before, in various trades, that they had taken the most apt unskilled laborers in placing reinforcing steel and paying them a small percentage more than the unskilled labor scale and used them for placing reinforcing. I think the plaintiff's testimony will bear out the statement I am just making. And in due course of time, the rul-

ing was forwarded back from our Central Office to the effect that any man who placed, fixed or tied reinforcing steel was considered a skilled mechanic.

Q. 123. That was an official ruling?

A. That was an official ruling that we received. Therefore, in view of the fact that the contractor—that it was stipulated by the contract that there was only one scale paid to mechanics, and 995 the Department of Labor, through the Veterans' Administration, had notified them that it was skilled mechanics' job to fix, place and tie steel, and that there was only one alternative, and that was to require the contractor to pay \$1.10 an hour, which he did, and the men had previously been carried over the duration of the past period, for which we were warning a decision—he was notified also to pay those men retroactively the difference between what he had actually paid them and \$1.10 an hour.

Q. 124. Do you know that he did?

A. Yes; I do.

Q. 125. At what rate?

A. The pay rolls will show that. I do know, personally, that they were paid. And in connection with the reinforcing steel, immediately after the contractor was required to pay this skilled scale, it immediately became a highly technical job of placing reinforcing steel, and the contractor did request from the United States Labor Employment Service that he be furnished with technical men that were able to read and interpret blueprints. I couldn't quite understand the sudden change from starting out with unskilled—

Q. 126. Do you know that the plaintiff contractor had difficulty in obtaining men to set this reinforcing steel? Was there a scarcity of such men?

996 A. At no time was our office, the Government office, able to ascertain the fact that there was a scarcity of reinforcing rodmen.

Q. 127. Do you know that the contractor did take laborers and try to teach them how to set reinforcing steel?

A. I have no personal knowledge of any such procedure.

Q. 128. Did the plaintiff contractor ever file any complaints with your office, that there was a scarcity of such laborers, that he was having difficulty—

A. That I couldn't recall definitely at this time.

Q. 129. Do you remember an employe of the plaintiff contractor named Moore?

A. I do; yes.

Q. 130. Do you know what he did on the job?

A. Well, it seems as if he was around on a little of most everything around the place there. As I recall it, he was termed by the contractor as a "keyman."

Q. 131. How was he carried on the pay roll?

A. Laborer.

Q. 132. Do you recall what his wage rate was?

A. As I recall it, without refreshing my memory, I believe it was 70 cents per hour.

Q. 133. Did the Government, or anyone else that you know of, have any objection to the plaintiff contractor paying a
997 laborer 70 cents an hour?

A. No, none.

Q. 134. Do you know whether this man Moore actually did a laborer's work?

A. I couldn't say definitely. However, as well as I can remember, he did, at times, do a laborer's work; and at other times, on occasions, we discovered him at work at mechanical jobs, or a mechanic's job.

Q. 135. What kind of mechanical work did you find him doing?

A. Well, for one instance, Captain Feltham and myself discovered, one Sunday, that Mr. Moore was fixing concrete.

Q. 136. Finishing concrete involves what operation?

A. The floating and troweling of the surface.

Q. 137. Is that a skilled mechanic's work?

A. It has been in my past experience on jobs, and the usual procedure is a skilled mechanic's trade.

Q. 138. Do you recall whether the plaintiff worked on Sunday, or worked his men on Sunday, as a general thing?

A. I don't think so, as a general thing. However, there were instances when he did work them on Sunday.

Q. 139. Was there any reason why he should not work his men on Sunday?

A. There was nothing to prohibit him; no.

998 Q. 140. How many hours a week were the workers on the job supposed to put in?

A. As I recall it, it was 30 hours.

Q. 141. Do you know whether all the plaintiff contractor's workers confined their work to 30 hours a week?

A. As I recall, now, there were instances when there was a shift put on at the first of the week—for instance, on Monday morning—and they worked 8 hours, and there was a stipulation in the contract whereby they couldn't exceed 8 hours per day, and they worked up their 30 hours of such time during the week as the hours were taken up, and, in turn, he replaced them with other employes.

Q. 142. You have stated, previously, that your experience in the construction work was considerable. Did you have much experience with reinforcing-concrete setters before?

A. I have; yes, sir.

Q. 143. From your experience, are they experienced or skilled workers, or would you say they were laborers or semiskilled?

A. At no time during the past 15 years have I been on a Government project whereby unskilled laborers were used for placing reinforcing steel.

Q. 144. What about semiskilled labor?

A. I have never known of semiskilled labor, in its entirety, to be used in placing reinforcing steel.

Q. 145. Have you ever noticed that, in the different localities, there is a different practice?

A. There is; yes.

Q. 146. Could you say whether or not the practice is more or less flexible?

A. Well, it would apply to restricted areas or localities. Speaking of that, it is not flexible; I should say, in no instance, north of the Mason and Dixon Line.

Q. 147. Do you recall whether or not the plaintiff contractor formally requested a ruling with reference to the pay to be given these reinforcing-steel workers, or steel setters, from the Central Office?

A. May I get you clear? Prior to the time that he placed the reinforcing rodmen on the project?

Q. 148. At any time, did he ever ask for a ruling?

A. That I couldn't state definitely. I do know that the Government office requested a ruling from Central Office, which we received.

Q. 149. By "Government office" you mean you and Mr. Felt-ham?

A. That is right.

Q. 150. On the job?

A. That is correct.

Q. 151. And they came back with the information that you previously gave?

A. That is right.

Q. 152. But you are not aware of any formal request filed by the plaintiff contractor?

A. No.

Q. 153. Now, with reference to the carpentry work, do you recall any difficulty or any controversy with regard to the pay that was given the carpenters?

A. I do; yes, sir.

Q. 154. Do you remember that there were any apprentices on the job?

A. At such times as the contractor signed the contract and agreement with the local carpenters' union, there were apprentices designated on the pay roll and worked on the job. But from the start of the project up until, as I recall, approximately June 20 or June 22, there was no apprentices appeared on the pay roll.

Q. 155. Why was that, if you know?

A. Well, to start off, to start the project, the contractor proposed to make three classifications of the carpentry work. For instance, the forming work, which I would estimate conservatively was 90 percent of the wood work involved on the job, he proposed, as I recall it now, to pay those men 70 cents per hour; and he further proposed, as he termed it—I never heard of the term before—to use what was known as "hatchet and saw men," who were to have a separate rate of pay.

Q. 156. Well, now, let's see. The first rate was 70 cents an hour?

1001 A. As I recall it; yes.

Q. 157. What would be the next rate, 90 cents?

A. I think it was 80 or something, as I recall it.

Q. 158. Those were the hatchet and saw men?

A. Yes; and then in turn, that class of carpenter work constituting, I should say, approximately 5 percent of the actual wood work on the job, such as framing the wood roofs or placing rafters and sheathing on, and he proposed further to use a few high class carpenters for the trim, which was a comparatively small amount of work involved, in view of the fact that this project was a neuropsychiatric station, and the frames and trim on the interior, the door frames and window frames and such as that, were metal, and this particular branch of the carpentry work only constituted a small percentage, the smallest percentage of any other branch of work; it was such as hanging doors and some miscellaneous placing of cabinet work and cornice, exterior cornices, and work of that description.

Q. 159. Were these cabinets all mill work, or were they built on the site?

A. As I recall it, they were manufactured at the mill and came in knocked down and were placed in position, as I recall it.

Q. 160. What classes of carpenter labor placed those cabinets?

A. The carpenter.

1002 By the COMMISSIONER:

Q. 161. First class?

A. Yes; the highest class. In fact, we never had the three classifications which the contractor proposed—within the skilled trades, which the contractor proposed to use.

By Mr. JULICHER:

Q. 162. What happened?

A. In respect to the classifications?

Q. 163. Well, you say that the plaintiff contractor proposed to use three classes of labor, and you say that didn't take place. What did happen?

A. Well, after a thorough examination of the classification of the men, it was determined by the office that such as the form men employed was considered a skilled trade, although they were classified—if they were classified as form men, they were considered as a skilled trade in their respective lines.

Q. 164. In other words, all carpenters were of one class, skilled workers?

A. In view of the fact that the specifications, P. W. A. Form 51, only had one scale of wages for skilled mechanics, and it was considered that form work was not an unskilled trade and, therefore, it could not be performed, in its entirety, by semiskilled help; and there was at least an interpretation to the effect that 1003 form building—although in some instances, in some localities, it may take, and it would have in that locality, a lower scale than some of the skilled trades. But in view of the fact that P. W. A. Form 51 only set forth one scale of wages for skilled mechanics—

Q. 165. Mr. Dodd, do you have a copy of the Roanoke union rules?

A. I do; if I may be permitted to get it.

Q. 166. Will you get it, please?

A. Are you speaking of the bylaws?

Q. 167. Yes. Will you tell me what this is, please?

A. This is the bylaws of the Live Oak Union No. 319 of the United Brotherhood of Carpenters and Joiners of America, 412 Jefferson Street, Roanoke, Virginia.

Q. 168. Do you know whether or not the plaintiff complied with those bylaws?

A. I had no information other than that he did during the life of such period as he was employing union carpenters.

Q. 170. Mr. Dodd, was there any discussion with reference to the use of local labor?

A. There was at a number of different times—well, throughout the entire life of the job, there was.

Q. 171. Will you tell me whether or not the plaintiff used local labor?

1004 A. To start the project off with, the contractor elected to use what is commonly known as open-shop carpenters.

By the COMMISSIONER:

Q. 172. That is nonunion?

A. That is nonunion; yes, sir; and in that, the contract stipulates that he must obtain such labor from the U. S. Reemployment Office, and the Roanoke office was designated, certified to, by them; and in starting off, as I said before, weekly, we submitted our pay rolls, or copies of the pay rolls submitted by the contractor, to the Reemployment Bureau in Roanoke, Virginia, for the purpose of having the Reemployment Bureau check against—they have records there—to check against their records, to see if all the men who appeared on that pay roll, other than union—and at that time there was no union, as I recall, any union trades of any description on the job—had been issued cards for this particular project through that office; and, in turn, weekly, they returned the pay rolls to the Government office, the Government field office there, indicating, in a covering letter, the names of the men who appeared on pay rolls who had not been issued cards through the Reemployment Bureau.

I made a rough tabulation, this past week, from the Reemployment correspondence; and I didn't examine it thoroughly, but from what I did see, it totalled some 380 men who are employed through the period of the job, who Reemployment Office advised our office had no work cards that had been issued by them.

1005 And also, after the brickwork started, the local business agent for the masons' union weekly checked the pay rolls to see if any man had been placed on the job, other than those furnished by the local union.

By Mr. JULICHER:

Q. 173. Do I understand that the plaintiff was to use local labor as completely as possible?

A. That is what P. W. A. Form 51 stipulates, that local labor—I can't recall the exact working of it, but local labor would be used to the fullest extent.

Q. 174. Was this one of those emergency relief projects?

A. It was a Public Works allotment.

Q. 175. A Public Works project?

A. And as I recall it, it was the first Veterans' Administration had on in that locality.

Q. 176. Now, do you know, of your own knowledge, whether or not the plaintiff used any men other than local workers?

A. I do know that he did; yes, sir.

Q. 177. You know, of your own knowledge, whether any of these men were workers, laborers, mechanics, of any previous Blair organization?

A. We have in the office files photostatic copies of letters or notes otherwise written by Mr. C. W. Roberts to the Reemployment Service, stating in words that "This is the man I talked to you about, who has worked for me on several occasions." We have those in our records, some photostatic copies and—

Q. 178. You have the copies with you?

A. I don't think so. I have them in my files. It is in the pay roll—attached to the pay-roll file, but there are in the records photostatic copies of them.

Q. 179. Do you know where this man Moore came from?

A. As I understood, his legal residence was Avon, Florida.

Q. 180. Do you know, of your own knowledge, that he ever worked for Blair before?

A. Well, only from statements of various ones around the job including himself.

Q. 181. Did you ever ask him?

A. He advised me that he had worked for Blair.

Q. 182. He told you that?

A. Yes, sir.

Q. 183. Did anyone of the Blair organization tell you that he was a keyman?

A. There was some correspondence between our office and the contractor's office and the local Reemployment Office, relative to that matter. We objected to the employment of Mr. Moore on the basis that he wasn't a local resident. In the first place, in the Reemployment Service, as I recall it, you were required to be a resident of the City of Roanoke or county or that vicinity at least six months prior to being eligible for registration there; and in view of the fact that Mr. Moore had recently come from the south somewhere, at that time—I don't know what locality—there was an objection put up by our office to the employment of him, and, in turn, Mr. Roberts, of Algernon Blair organization, I think—in fact, I am positive it is in a letter to our office—stated that Mr. Moore was a keyman.

Q. 184. A keyman, but he was listed as a laborer?

A. Listed as a laborer; yes. There was a provision in the contract, whereby the contractor could employ—I have never known of them to be termed before as "key" men, but supervisory force.

Q. 185. Supervisory force?

A. Yes; the designation of "key" man I wasn't aware of, up until this date of this discussion.

Q. 186. Did you ever notice on the daily log—did you ever notice particularly there with reference to the Blair organization, that there seemed to be two columns, one column being headed

"Day Work"—presumably meaning the men at work, listing below the superintendents, engineers, managers, all the way down to bricklayers and laborers, and it shows so many at work; and then alongside of it, it says, "On pay roll," and it lists various numbers of men, who are totalled.

Now, I am looking at Wednesday, August 1, 1934, which shows 422 men at work, 1,009 men on the pay roll. Will you explain just what those two figures mean, if you know?

1008 A. Well, this first column here indicates the men actually employed on the project as of that date.

Q. 187: They were actually being paid?

A. Being paid as of that date, employed and on a pay status as of that date; and the men in this column—it says "On Pay roll" were 1,009, and they were the men who were on the pay roll. This was brought about to some extent by the 30-hour-a-week stipulation in the contract. In other words, starting at the first of the week, the force was put on and worked up until such hours as 30 hours—at the rate of 8 hours per day, that 30 hours was completed, and then at the end of that, they were put on in most instances—I couldn't definitely state every instance.

Q. 188. What were those other men doing, those men that were just on the pay roll?

A. They were only permitted to work 30 hours per week. They were waiting their turn.

Q. 189. What were they doing, waiting at home for a telephone call, or sitting on the job and waiting?

A. Well, in some instances they knew approximately when the contractor would call them, I assume, when they would be able to resume after the 30 hours of work; and we did have a considerable amount of trouble with excess men on the job. In some cases, the contractor would call the Reemployment Bureau for 50 men, and they would report to the job, and maybe 1009 he would put on 2 or 3. I have know them to come the entire week.

Q. 190. The Employment Bureau was located in town?

A. Yes; in Roanoke, Virginia, some 4¾ miles from the site.

Q. 191. They were sent from that Bureau out to the job?

A. That is right. In other words, the contractor would call for so many men at a certain time. I think there was some stipulation whereby he was to give the Reemployment Office either 24 or 48 hours' notice, some advance notice, and they would report at the job site at the time stipulated by the contractor; and I have known of cases, in many instances, whereby they reported as many as 50 and only 2 went to work.

Q. 192. What did the rest of them do?

A. He would tell them to report—wait until noontime or report tomorrow morning, or the next morning, and maybe they would come back the next morning, or the following morning, and still wouldn't go to work.

Q. 193. You mean the men were sitting around there, waiting?

A. Yes. Our office had a considerable number of complaints from the various reemployment services and other sources for Roanoke of men being required or directed to report for work and not being placed on a duty status, a pay status.

Q. 194. Do you remember whether there was any preference of any kind given to workers?

A. You mean required or given?

1010 Q. 195. Required?

A. Well, P. W. A. Form 51 requires—there was a stipulated procedure, in which they would be employed. Veterans were given the first preference, and so on down, local citizens and citizens of the United States, Etc.

Q. 196. Do you know whether the Veterans were given preference?

A. Well, the Veterans who were employed on the job were a rather small percentage.

Q. 197. Was it smaller than what applied?

A. It was rather difficult to determine any factors, in view of the fact that the contractor had the right, under the terms of his contract, to discontinue or dismiss any employee who he deemed incompetent or physically incapacitated to perform duties to which he was assigned. Therefore, we were not in position to examine these men, give them a medical examination and stay with such man at such periods as he was employed by the contractor, and determine those facts in every instance.

Q. 198. Do you know who did the hiring and firing for the plaintiff?

A. Well, I couldn't recall definitely. I think the contractor's general superintendent, in most instances.

Q. 199. Who was that, Mr. Roberts?

A. Yes; they may have had other instances when the foreman and subforeman did the hiring.

1011 Q. 200. Did he ever tell you what he thought of hiring Veterans?

A. I can't recall of any definite statement to that effect. The matter was discussed. It appears that, at one time, the Veterans provision of the contract requirements were not being fully complied with, and the matter was discussed with the contractor on several occasions; and as I recall, the contractor's superintendent stated that there was a very small percentage of them that were

directed from the Reemployment Service to report to the job, who were physically qualified for performing the duties for which they were sent out to the job. The Reemployment Service had a system of different colored cards, which designated a Veteran or Ex-Service man. We could check on our list at any time and tell just the number of Ex-Service man and Veterans that were on the job.

Q. 201. Mr. Dodd, with reference to this particular charge of the Government inspectors interfering, when the contractor had discharged men for incompetency, do you recall any such instance?

A. I can think of no instance whereby the contractor was directed—and no records indicating whereby the contractor was directed to reemploy any discharged man from the project.

Q. 202. Competent, incompetent, or otherwise?

A. Or otherwise; no.

Q. 203. Mr. Dodd, what is your definition—or what type of labor do you class as intermediate labor?

1012 A. Well, over the past 15 years in the Government service, on work of this description, there has always been an intermediate grade of labor, who are men generally who assist a mechanic.

Q. 204. Assist a mechanic? Well, let's take the case of a carpenter; what, particularly, would you say a helper to a carpenter would do?

A. Well, that would consist of getting the necessary material, ordinary heavy lumber, for illustration, cart it up to a point near the carpenter, if he is working on a bench or a scaffold, near the point of erection. That is ordinarily done by an unskilled helper; and in turn, after it is carted up to the point of erection or fabrication, an intermediate grade of help—on an open-shop basis, there are two different classifications—on an open-shop basis, would, in turn, assist the carpenter, such as handing him nails, or picking up lumber and handing it to the carpenter, or holding a piece of timber if he was nailing it in place, and just general assistance. That is on an open-shop, nonunion job; and if you are working union carpenters, in no instance have I ever known whereby that union, under which the man was—under which the men were being employed, would permit what is known as sawing or nailing of any description by an apprentice. A carpenter, a skilled mechanic, performs all of that class of work of nailing and sawing, except an apprentice was allowed—
1013 an apprentice, in learning his trade, is allowed to nail and saw along under the supervision of the carpenter.

Q. 205. Now, on this particular job, what condition did you find existing, with reference to intermediate labor?

A. Well, I found that unskilled labor was, in some instances, using tools of a mechanic and performing, in some instances, the duty ordinarily required of a carpenter.

Q. 206. Did you stop that when you found it?

A. Such as nailing and sawing, etc.

Q. 207. Did you stop it when you came across it?

A. Whenever we found there was evidence that it was being done; yes.

Q. 208. Do you recall any instance where the Blair Company was permitted to use intermediate labor?

A. They were.

Q. 209. Did they actually have intermediate labor of various types on the job?

A. Well, they endeavored to use an unusually large amount, during the period in which they were working open-shop carpenters, an unusually large amount of what is known as intermediate grade labor; but on other branches of the work, similar to masonry and plastering work, such, I would state, as commonly known as a plasterer's tender, and recognized by the United States Department of Labor as a semiskilled job, as plasterer's tender and mason's tender—they made no effort to use this class of
1014 intermediate grade, in view of the fact that mason's tender and plasterer's tender would not be permitted to lay brick or do any plastering; therefore, during the entire life of the job the mason's tender or plasterer's tenders used in connection with that branch of the work, and they were permitted to use unskilled labor and a lower class than the intermediate grade on these particular branches of the work.

Q. 210. Now, do you know whether or not the pay rolls will show whether they used any intermediate labor, or not?

A. They will; yes, sir. In fact, Captain Feltham and myself checked two pay rolls, and while we found some 30—on the two week endings, 30—some intermediate rates of pay.

Q. 211. Do you recall the name of the subcontractor that did the tile work and Terrazzo work?

A. I do.

Q. 212. What was the name of this subcontractor?

A. The Roanoke Marble & Granite Company.

Q. 213. Do you recall whether or not there was any discussion or difficulty with reference to the work performed by this subcontractor?

A. There was; yes, sir.

Q. 214. Will you explain what was the difficulty, with reference to the Terrazzo work?

A. On the Terrazzo work, the question came up as to the
1015 classification of the employee who operated the grinding

machine, the Terrazzo grinding machine, the floor grinding machine. After the question was brought up, the contractor contended that an intermediate grade or helper, whichever you may term it, commonly and ordinarily operate Terrazzo machines. And after some discussion on the project there, this matter was referred to our Central Office for decision and, in turn, the Veterans' Administration Central Office advised the field office that a man who operated a Terrazzo machine was considered a skilled man in his respective trade.

Q. 215. Now, was there an official ruling handed down on that from Central Office?

A. Yes, sir; I just quoted it.

Q. 216. That was an official ruling?

A. Yes, sir.

Q. 217. Was that ruling asked for formally by the contractor for the subcontractor?

A. After the discussion arose, we, in many cases, or in all cases, were anxious to get a ruling on it, in view of the fact they were refraining from directing the contractor to pay a scale higher, or a classification higher than one required by the contract. In some instances, if we were doubtful of the particular classification or scale, we follow it into our Central Office for interpretation and decision on it.

1016 Q. 218. Will you tell me what an improver is?

A. Well, as I understand it, technically, it appears to be an apprentice, but I don't know entirely.

Q. 219. An apprentice in what line of work?

A. In tile work, what is known as quarry tile and ceramic tile.

Q. 220. Did the contractor in this case, or this job, have any improvers on the work?

A. I have here before me a certified copy of the weekly pay roll of the Roanoke Marble & Granite Company, Inc., under date of August 30, 1934, certified to by the timekeeper, Mr. R. L. Knox; and there appears on this pay roll an improver at 60 cents per hour.

Q. 221. They did employ improvers, then?

A. They did; yes.

Q. 222. And the pay roll will show that?

A. Yes, sir; I have one right here before me.

Q. 223. Did you inspect this work done by the tile subcontractor?

A. I did.

Q. 224. What kind of work did you find?

A. Well, I found a considerable amount of faulty work, that wouldn't meet the specifications and the contract requirements.

Q. 225. What did you require them to do?

A. Remove it and replace it in compliance with the contract requirements.

1017 Q. 226. Did they do that?

A. They did, in some instances. For instance, the lobby in the main building No. 2, if I recall correctly, was laid either the second or third time. The record will show that.

Q. 227. Can you remember whether or not the work was ripped out two or three times?

A. I can remember very distinctly on this particular occasion, because there was an unusual amount of controversy over the various items connected therewith.

Q. 228. I hand you a letter, which seems to have been written by you, which bears your signature, to Algernon Blair, and will ask you if you wrote that letter?

A. I did, sir.

Q. 229. Do you recall the occasion for that letter?

A. It was in connection with some poorly placed tile base and border; and, further, the specifications required proper protection of the quarry tile base and border, and, in instances, this border extended across the door opening forming the threshold, and the general contractor was rolling wheelbarrows over this tile threshold, pouring fresh floors in the rooms, and was breaking it up; and it was necessary, in one instance, to remove it and replace it.

Mr. JULICHER. I offer that letter as Defendant's Exhibit EE.

Mr. KILPATRICK. No objection.

The COMMISSIONER. It will be received and marked.

1018 (Said letter from Dodd to plaintiff, so offered and received in evidence, was marked "Defendant's Exhibit EE" and made a part of this record.)

By Mr. JULICHER:

Q. 230. Mr. Dodd, have you any personal knowledge of how Mr. Wilson, who was the head of the Roanoke Marble & Granite Company, hired tile setters?

A. Well, at the start-off of the tile work, Mr. Wilson's outfit reported on the job, and I was busy on other things at that particular time, and he devoted some 2 days—

By Mr. DOYLE:

Q. 231. Will you respond directly to the question, please?

A. What was the question?

Mr. DOYLE. Read the question, please.

(Thereupon, the reporter read the pending question.)

Mr. JULICHER. Just say "yes" or "no."

The WITNESS. Yes.

1019 Q. 232. Since you know, explain it?

A. If I may. The Roanoke Marble & Granite Company's force had been on the job some 2 days, and as I was quite busy on other items those 2 days, I proceeded to check the force and specification of his men and his work installed; and at this particular time, 2 days after he started, he had some 22 men on the project and 1 man had been employed through the proper channels, as required by the specifications; and, in turn, the general contractor was so advised.

Q. 233. And did you, at that time, have knowledge of just what his set-up was; that is, the number of mechanics and helpers?

A. He had 2 mechanics on the job; and, at that time, the remaining 16 or 18, as I recall, without referring back to the records, were intermediate, what he terms as improvers and laborers; and after checking the men by name, as they appeared on the pay roll, he had numerous men termed as improvers working in various buildings, alone.

Q. 234. What type of work were they doing?

A. Setting base and border tile; floor base and border tile.

Q. 235. Do you know whether that is an improver's job?

A. Not from any classification that I have ever been able to arrive at, on any other job.

Q. 236. Do you know whether or not that is a union practice?

A. No; it is not. I know that, because I consulted the union representative after this. In fact, I have the union bylaws, under which it was operating, here in my file.

1020 Q. 237. Mr. Dodd, do you still have a record of the plaintiff's subcontractor's, the Roanoke Marble & Granite Company's original claim made to the Government?

A. I do, sir; yes.

Q. 238. Can you, from your records, tell me what that amount was? In order to save time, you recognize this figure of \$7,078.80?

A. I have it broken down here in separate items, but it will take me some time to go through it, because I haven't got it totalled.

Q. 239. Mr. Dodd, do you have those figures, now?

A. I do.

1021 Q. 241. Where did you get this figure?

A. This was based on some figures furnished me through the Veterans' Administration of the plaintiff's original estimate, and the difference expended between his original estimate—

Q. 242. Why was it submitted to you?

A. For a report.

Q. 243. You mean this was their estimate of their added expenses?

A. That is right.

Q. 244. And was submitted you for verification?

A. For a field check.

Q. 245. For a check?

A. Yes; and other reports in reply to the Veterans' Administration Central Office request.

By the COMMISSIONER:

Q. 246. It was a part of your official duty to make some recommendation or take some action?

1022-1023 A. Yes; make a report to the president, as I understand, to the General Accounting, or Central Office to General Accounting, as I understand.

Q. 247. Just give me those two figures. What was the original estimate?

A. The subcontractor's original estimate, as stated by him, was set up for mechanical labor, for skilled mechanical labor, for \$7,078.80.

Q. 248. And the amount of the claim as shown by the petition?

A. And the subcontractor claimed that he actually expended \$8,859.40 for labor under the contract.

Q. 249. Do you remember a man named Knox that worked for this subcontractor?

A. I do, sir.

1024 Q. 250. Do you remember what he did around the job?

A. He was carried on the pay roll, designated as time-keeper. He actually supervised the general installation of the tile base and border, quarry tile and ceramic tile.

Q. 251. Do you actually know that of your own knowledge?

A. I do, yes.

Q. 252. Mr. Dodd, the plaintiff's subcontractor has stated, on direct examination, that you made a certain ruling with regard to his work, and when he demanded that you put it in writing, you refused. Do you recall any such request?

A. A subcontractor, under the provisions of the contract, had no such right to demand of the Government officer a ruling in writing, directed to the subcontractor, in view of the fact that our office, officially, did not recognize a subcontractor from that standpoint.

Q. 253. Now, suppose the general contractor—

Mr. DOYLE. Now, just a minute. I move that the answer be stricken as not responsive to the question.

The WITNESS. I had not quite completed it, sir.

The COMMISSIONER. I think I will overrule the objection.

The WITNESS. I made no such ruling, verbally or in letter form.

By Mr. JULICHER:

Q. 254. Now, suppose the general contractor asked for such ruling, then you would have put that ruling in writing, would you not?

A. If that had been our decision at the time; yes, sir.

By the COMMISSIONER:

1025 Q. 255. You mean you would have had it in writing?

A. In letter form.

Q. 256. You would have put your objection in writing, if he had so requested?

A. Yes, sir; if he had so requested it, if there was any objection.

By Mr. JULICHER:

Q. 257. Mr. Dodd, did you come in contact with Mr. C. B. Wilson?

A. On various occasions I did; yes, sir.

Q. 258. I want to distinguish this Wilson from another Wilson that seems to be a witness in this case. C. B. Wilson was the head of the Roanoke Marble & Granite Company?

A. Yes, I did, on various occasions; not in an official capacity.

Q. 259. Did you make your reports to him about the various inspections?

A. I made no reports to him. At such times as the work was found not to comply with the contract requirements, the contractor was so notified in letter form of why they didn't meet the contract requirements.

By the COMMISSIONER:

Q. 2600. You mean the general contractor?

A. Sir?

Q. 261. The general contractor?

1026 A. The general contractor, Algernon Blair, yes, sir; and the reason why it didn't, and if it were necessary to be removed, it was ordered to be removed.

By Mr. JULICHER:

Q. 262. How did you find Mr. Roberts, with reference to taking corrections or directions with reference to your findings and the specifications?

A. You mean his attitude towards them?

Q. 263. Yes.

A. Mr. Roberts was unusually—if you may term it such—bull-headed, and very resentful, in every instance, of any decision

that was handed down, whereby it affected his relative standing with his company, which was Algernon Blair.

Q. 264. You mean, then, that he didn't like to take corrections?

A. Yes; and on numerous occasions, in the presence of Captain Feltham, in our office, he has come in our office and has requested that we not write letters or send copies of letters to the Montgomery office, with respect to faulty workmanship and other matters; that such as that could be adjusted in his field office.

Q. 265. Mr. Dodd, do you recall the tile subcontractor suffering any delay, because of the lack of material on the job?

A. I recall in some instances, he did; I couldn't recall the date, unless I refresh my memory from the record.

Q. 266. The plaintiff's subcontractor, Wilson, on page 487, in his direct testimony, admitted a few days' delay. Have 1027 you any way of knowing, offhand, just how many?

A. I would have to examine the daily log, in order to give you a correct answer to that, throughout from the start of the tile work until completion, but I do recall a certain instance whereby he was out of tile, but the exact dates I couldn't state.

Q. 267. Do you know whether the plaintiff's subcontractor had any difficulty obtaining skilled Terrazzo workers, or tile setters?

A. I don't recall any official complaint to the Government office, no.

Q. 268. Did he ever say to you that the reason why this work was faulty, in some cases, was because he wasn't able to pay experienced men?

A. That I do not recall distinctly, as to whether he made such a statement, or not. If I may state the findings of my inspection on the work permitted, I can tell.

Q. 269. What do you remember about it?

A. I remember in cases when there was an unusually large amount of tile base and border to be removed, was in such instances when he had used an excessive amount of unskilled and semiskilled labor, in placing this—measured, I may say, against mechanics—in placing this tile base and border.

Mr. DOYLE. May I ask the witness a question?

By Mr. DOYLE:

Q. 270. Is your answer directed to delay or to faulty construction?

A. I didn't mean to direct it at delay. My intention was to direct it at the amount of work installed, that didn't 1928 meet the contract requirements.

By Mr. JULICHER:

Q. 271. Mr. Dodd, what grade of workman was the plaintiff's subcontractor required to use in grinding his Terrazzo work?

A. The decision was forwarded from Central Office to the field office, to the Government field office, to the effect that it was skilled mechanics' work, and the contractor was so notified; but as I recall it, the pay roll indicates that he continued to pay this intermediate rate at rates of 60 cents an hour, as I recall, from the pay rolls, for that purpose, and which he had been advised it was considered skilled mechanics' duties.

Q. 272. Do I understand you correctly when you say that a Terrazzo grinder was supposed to be a skilled workman, a skilled mechanic, and receive \$1.10 an hour?

A. That was the decision handed down to the field office by the Central Office of the Veterans Bureau.

Q. 273. What type of labor did the plaintiff's subcontractor use?

A. I am quite positive he used an intermediate grade, and by referring to the pay rolls, I think you will find that he has classification on there as Terrazzo grinder at 60 cents per hour, although he had been notified officially by the field office that it was considered a skilled mechanic's duty; and therefore, that indicates it would come within the \$1.10 limit, which was the only one one established for skilled mechanics.

1029 Q. 274. Mr. Dodd, who put up the tile partitions, the interior partitions, if you recall?

A. As I recall, some fireproofing concern; I am not able to recall which one.

Q. 275. It wasn't this Roanoke Marble & Granite Company?

A. No; as I recall, it was a subcontract by the general contractor.

Mr. JULICHER. Your witness, Mr. Kilpatrick.

Cross-examination by Mr. KILPATRICK:

X Q. 276. Mr. Dodd, you have your daily log there in front of you?

A. I do.

X Q. 277. Will you look at January 31, and tell us the size of Mr. Blair's force at that time?

A. January 31, did you say?

X Q. 278. Yes, January 31, 1934?

A. There appears a total of 80 men.

X Q. 279. Do you consider that an adequate force, as of that time?

A. Well, if you will refer to this, a considerable number of these men are performing duties incidental to construction activities, but not a part of the construction, such as plumbers and plumbers' helpers.

X Q. 280. I am speaking of Mr. Blair's force, now?

A. I am speaking of Mr. Blair's force, from this log. These plumbers and plumbers' helpers were running the outside water lines, the temporary water lines, which was not a part of 1030 the contract—I mean it was incidental to the contract, but not a part of the actual construction.

X Q. 281. Will you tell me whether or not he had an adequate force, on that date, for this job?

A. For the purpose for which he had them, I would say yes.

X Q. 282. Well, for any other purpose, was it inadequate?

A. Well, that could be applied, Mr. Kilpatrick, to several different meanings. If he had been, at this particular time, actively engaged in construction work, I would say no; otherwise, he did.

X Q. 283. Do you know the work that Mr. Blair had to do there, under his contract?

A. Well, if you may permit me, I can pick out the men who were engaged, that is, the employees who were engaged on the temporary miscellaneous work.

X Q. 284. Well, now, when you have studied that list and picked them out that way, will you then be able to tell us whether or not Mr. Blair had a force adequate for carrying on his contract, at that time?

A. On what completion date? Your contemplated completion date or the contractor's contemplated date, or the contract completion date? Which may I base my opinion on?

X Q. 285. On either? If they differ, I would like to have your opinion on each?

A. My personal opinion of the amount of labor involved, and the continuation of this job with the proportionate increase, would have not permitted you to complete a contract of that 1031 magnitude by November 1. It was ample, or your labor was ample, under the contract period, in which the contract expired, but I would say no, not as of November 1.

X Q. 286. What additional men do you think he should have had there, at that time, if he was planning to complete by November 1, in addition to the force shown on your log?

A. Well, if he contemplated the completion of this contract by that time, there should have been considerable form lumber on the job; men working on benches, making up the columns and miscellaneous forms, ready for erection at such times as the footings and other concrete was poured.

X Q. 287. You say "considerable"—how many?

A. Well, I should say that, under the terms of that, at least 35 men could have been conservatively added to this force.

X Q. 288. Then if he had had those, you think he would have had an adequate force to complete by November 1?

A. And had continued the following three months, I may say, continue—to increase them in proportion.

X Q. 289. I understand, but as of the stage of the work at that time, you think, with that addition, he would have had an adequate force, as of that date?

A. That is my personal opinion, yes.

X Q. 290. Mr. Dodd, when letters from the Roanoke Office of the Veterans Administration bear the initials in the lower left hand corner "W. R. J.," that indicates they were dictated by Mr. Johnson?

A. Yes, sir.

1032 X Q. 291. Who was inspector of the mechanical equipment work?

A. Yes, sir.

X Q. 292. Will you examine your log and let me see if you were at the job on March 5, 1934?

A. March 5, 1934? If I get your question correctly, is it the question, was I on the job as of this date?

X Q. 293. Yes, sir?

A. This log makes no mention as to whether—

X Q. 294. The log wouldn't show that?

A. Whether I was or was not, and I could not definitely recall, over that period, whether I was there or whether I wasn't.

X Q. 295. That applies to any other date, I suppose, in it?

A. That is right.

X Q. 296. Who kept that log, if you were away?

A. Well, if I was away and Captain Feltham was away and Mr. Johnson was there, he would keep it. It was split up among the various supervisory force as to the dictation.

X Q. 297. You were second in command, you were in charge when Captain Feltham was away?

A. At times, yes; most of the time through the life of the job.

X Q. 298. Was anybody else in charge, when he was away?

A. In one instance, Mr. Johnson was.

X Q. 299. In one instance?

A. In some instances, I say.

X Q. 300. But he was the third ranking man on the job?

1033 A. Well, I couldn't say he was third. He was assigned to the mechanical inspection.

X Q. 301. I notice some letters in Plaintiff's Exhibit 42, signed by Mr. Johnson as acting superintendent of construction?

A. That is right.

X Q. 302. Does that indicate that both you and Mr. Feltham were away when he signed letters of that sort?

A. Yes, sir.

X Q. 303. He wouldn't be acting superintendent while you were there, would he?

A. That would be possible; yes.

X Q. 304. That would be possible?

A. Yes.

X Q. 305. I am just trying to find out who was the acting superintendent when Mr. Feltham was away, whether it was you or Mr. Johnson.

A. Yes; I couldn't recall, as I mentioned before, but at various times, such times as you see letters signed by me, I was in there; and such times as you see letters signed by Mr. Johnson, he was in charge.

X Q. 306. Who decided who would be in charge, during Mr. Feltham's absence?

A. That was Captain Feltham's job.

X Q. 307. And sometimes, when he left, he designated Mr. Johnson to be in charge, during his absence?

A. Yes, sir.

X Q. 308. When letters written by the Central Office to
1034 Mr. Blair, bear the notation "CC to SC," that means that a carbon copy went to your office?

A. A carbon copy to the superintendent of construction, yes.

X Q. 309. "SC," means superintendent of construction?

A. That is an abbreviation for it; yes, sir.

X Q. 310. I believe you testified that you didn't have any information, during the progress of this job, that Mr. Blair had planned to complete by November 1; is that right?

A. I remember of no authentic information, in letter form or otherwise; it merely may have possibly been, in some instances, hearsay, but I had no authentic information that he contemplated the completion of this contract as of November 1, and I had no reason to believe that he would.

X Q. 311. Did you have any communication from him, during the course of the job, or did you see any communication to your office or to the Veterans' Administration, in which he said that he would have completed his job before temporary heat was necessary, if he had not been delayed by the mechanical equipment contractor?

A. I do not remember. Our routine office procedure was to the effect that a supervisory force letter was sent to our office, and it was initialed by the supervising superintendent, or myself, or whoever it may be; but, however, in many instances, there were letters entering the office that do not bear my signature.

1035 X Q. 312. You do not deny that letters were written by Mr. Blair to your office, during the course of this job, in which he stated that, but for the delay of the mechanical equip-

ment contractor, he would have finished before cold weather required temporary heat, do you?

A. I do not deny, but I have no knowledge of any such.

X Q. 313. I hand you Plaintiff's Exhibit No. 9, which is plot plan No. 1, or map of the job—I don't think it will be necessary to mark it, unless counsel or the Commissioner desires it done—but would you describe the location there in reference to the building of the central mixing plant you talked about?

A. I believe I could indicate it better—I will indicate it in blue ink. I am not attempting to locate it to scale. I will outline it in general, not to scale, approximately where it was.

X Q. 314. Will you write "mixing plant" by that?

A. All right.

X Q. 315. There is a scale of distance, I believe, on this map, isn't there?

A. Yes.

X Q. 316. Will you tell us, roughly, the distance in feet from that mixing plant to No. 7 Building? I believe that was about the farthest removed from that point, wasn't it?

A. Well, I would have to have a scale, Mr. Kilpatrick, to answer that intelligently. I wouldn't attempt to estimate it. I would have to have a rule or scale of some description.

X Q. 317. Can you tell, by looking at it, whether it was 1036 as much as half a mile, or not?

A. Well, yes; I would say the scale indicates that. This is 100 feet to an inch, and it would extend from here to here [indicating].

X Q. 318. It would be just about half a mile, wouldn't it?

A. Half a mile would be—

Mr. JULICHER. If plaintiff's counsel wants to make mention of these figures or distances, I suggest we actually get them.

The COMMISSIONER. If it is important, we can have it scaled off.

Mr. JULICHER. I just want it understood that this is purely guess work.

The COMMISSIONER. I think that appears in the record.

The WITNESS. I would estimate it is in excess of half a mile, Mr. Kilpatrick.

By Mr. KILPATRICK:

X Q. 319. Not three-quarters of a mile, is it?

A. I wouldn't make any definite decision, unless I had a rule or scale.

X Q. 320. Well, the map has a scale on it?

A. Yes, sir.

X Q. 321. Now, Mr. Dodd, some honeycomb appears in all concrete jobs of the size of this one, doesn't it?

A. There does, in practically every job. It is possible, but not probable, to pour an entire project of this multitude, without having small honeycombs of various descriptions. When
1037 I say small, I mean places, for instance, of that size around in the concrete. I have poured a considerable amount of concrete on other jobs, where it had to be water tight—if I may state, for illustration, at the District filtering plant, where there was acid on one side of the wall and the filtering plant on the other. That concrete couldn't be poured until that honeycombing—if honeycomb appears, we cut it loose, cut the section out.

Q. 322. I wasn't talking about a water plant.

A. That is possible, but not probable, to pour a job of this multitude, without a small amount of honeycomb.

X Q. 323. When you get honeycomb in concrete, what do you do to correct it?

A. Well, it depends on the extent and the locations. In some instance, some architects and Government agencies require what is known as "gunite." That is a gun that forces it into the crevices. But on a small area of honeycomb—there were certain localities where it wasn't considered detrimental to the strength—we permit the patching of the honeycomb concrete, or otherwise porous concrete.

X Q. 324. Now, I believe you testified, or perhaps it was Mr. Feltham, that a harsh mix was being used at this Roanoke job; is that true?

A. Well, the contractor, at one time, stated it was rather harsh, but—

X Q. 325. Mr. Fahy's report, put in this morning, refers
1038 to it as a harsh mix. That is what you understood it referred to?

A. Yes.

X Q. 326. Well, now, a harsh mix is—you are more likely to have honeycomb with it, are you not, than with one that is not so harsh?

A. You would, yes; that is proper.

1039 X Q. 327. Now, you testified, I believe, that there was no form lumber for building No. 6 from May 18 to June 16?

A. Yes, sir; that is what the daily log shows.

X Q. 328. Now, at that time, Mr. Blair was working on other buildings on the reservation, was he not?

A. He was; yes.

X Q. 329. In other words, the whole job wasn't shut down between those dates?

A. No; no; I just cited the particular building on which there was no form lumber available.

X Q. 330. You mean by "available," that there was no form lumber on the reservation, not in use on some other building, that could have been used on No. 6?

A. That is correct, sir.

X Q. 331. What are the first wooden forms necessary on a building of that type, like No. 6?

A. Well, the first actual—literally speaking, and this doesn't amount to a whole lot—would be the forming for the footings.

1040 X Q. 332. You have wooden forms for the footings?

A. In boxing for the footings. If you notice on the photographs, in some instances, the basement floor level, the bottom of the basement floor level was right on, or close on the bottom of the footings, and in cases where the footings extended above the ground, the top of the footing, it was boxed to retain the concrete in the footings.

X Q. 333. Well, it will ask you this: Wasn't the first substantial amount of wooden forms for Building No. 6 the forms for the first-floor slab and supporting the columns for that slab?

A. That would in the walls; yes.

X Q. 334. The walls, or wherever the support was?

A. The basement walls. That would be the first substantial forming.

X Q. 335. Now, can you estimate how much lumber would be necessary for that amount of forming?

A. At this time, in this position, I wouldn't attempt to estimate the amount of lumber required, in view of the fact I am not familiar under which method the contractor proposed to install the forms and in what portions, as to what sections of the building he proposed to pour. There is a considerable amount of items that would enter into the amount of lumber required.

1041 X Q. 336. Can you give any estimate as to the minimum requirements for starting ahead on this building?

A. I wouldn't be in position to give you any such estimate as that, Mr. Kilpatrick, not at this time.

X Q. 340. I assume that, during this time when there was no form lumber available for Building 6, there were not any substantial shipments of lumber coming into the job?

A. No; as I recall it, for a while, there did some come in shortly after they started the forming of the basement walls and columns supporting the first floor, but—

X Q. 341. On No. 6?

A. On No. 6, I think it was, as well as I can recall, from memory. But, however, the majority of the form lumber used

on this particular building that we have in question was lumber reused from other buildings.

X Q. 342. You are sure about that?

A. Well, as sure as I could see by personal observation from going over the job and seeing the lumber on the lot.

X Q. 343. Did shipments of form lumber begin to come in, in any quantity, shortly after they had formed base walls and supporting columns of the first floor slab?

1042 A. I wouldn't state definitely, Mr. Kilpatrick. I do have a recollection of some lumber coming during the forming of the building, and as I recall it, there was a small amount—not any appreciable amount of lumber for forming the buildings of that description.

X Q. 344. Of course, when you would enter in your log that no lumber was available, you knew there wasn't some that had been shipped in and was standing there and that could have been used, didn't you?

A. Well, we went over the ground daily, Mr. Kilpatrick, and endeavored to establish by authentic information suitable for this work, by inspecting the different buildings and seeing if there was any surplus lumber stacked on the ground or in the buildings, for the purpose of forming this building, or these buildings.

X Q. 345. Could you tell us how much of form lumber would have been required for that Building No. 6?

A. I could not, and from the movements of the lumber, to be frank with you, Mr. Kilpatrick, I don't believe the general contractor knew.

1043 X Q. 346. I was asking you, of course, about what you know. We can ask him later on about what he knows. You have had jobs, as I understand it, for the Veterans' Administration, on which reinforcing steel rodmen have been recognized as intermediate labor?

A. No, sir; I have not.

X Q. 347. On all Veterans' Administration jobs, rodmen are required to be paid the highest mechanical rate, are they?

A. I wouldn't say the highest mechanical rate, Mr. Kilpatrick. They have been classified as skilled mechanics. That rate may have not been comparable to other trades. For instance, a bricklayer would get a higher scale. Under the contract, it was permissible to pay mechanics various scales of wages.

X Q. 348. Rodmen got the same as bricklayers on this job?

A. Yes; any skilled mechanic of any description, that was considered a skilled mechanic, was required to be paid \$1.10 an hour, under our interpretation of the terms of the contract.

X Q. 349. At least?

A. At least, yes; that was the minimum.

X Q. 350. Surely. We understand that that was the minimum rate. Well, is it customary for these rodmen to get the same pay as carpenters?

A. That would be governed more or less by the locality in which you are operating.

X Q. 351. Well, take Roanoke, what would be the custom in that neighborhood?

A. I couldn't state as to the local prevailing wage rate for rodmen in that locality, because I had no occasion to investigate the local rates, in view of the fact that the contract set for the 1044 skilled trades, which would be \$1.10, would be a minimum of \$1.10. Although the scale may have been slightly lower, the contract specifications require that Algernon Blair Company pay \$1.10 for that skilled trade.

X Q. 352. And they have not been recognized as semiskilled workers on any other Veterans' Administration job that you know anything about?

A. In my past 15 years, and even Army jobs, and the Veteran Administration jobs, including the job which I have supervision of today, they have never been recognized as semiskilled workmen.

X Q. 353. Did you have any connection with the building of the addition to the Roanoke Veterans' facility in 1938?

A. I did not; no sir; I was never on the ground.

X Q. 354. Have you ever seen the specifications for it?

A. No, sir; I had no occasion to check them.

X Q. 355. You spoke, I believe, of having taken this matter up with Central Office, this matter of pay for rodmen?

A. Yes, sir.

X Q. 356. And I believe, at Roanoke, you put in evidence a letter from Colonel Tripp, saying that the Labor Department considered these men as being skilled mechanics, and that following from that, you interpreted the contract as requiring them to pay them \$1.10 an hour; that is the way it came about, wasn't it?

A. No; it wasn't following that. We had discussed the matter, Captain Feltham and myself, and we were quite at variance with the contractor's decision as to the method which he proposed to install this steel, using unskilled labor at a slightly higher 1045 rate than the unskilled rate; and in view of the fact that we weren't thoroughly satisfied of the terms of the contract, we then, in turn, referred it to Central Office for final decision. Nor, at no time, did I ever—if I may be permitted to say—or did Captain Feltham—was of the opinion that it was an unskilled or semiskilled job.

X Q. 357. What tools do these rodmen use in placing steel?

A. They use plyers, principally.

X Q. 358. Plyers, principally?

A. Yes.

X Q. 359. What do they use their plyers for?

A. For tying the steel,

X Q. 360. With plyers, you can twist the wire that holds the steel in place, can't you?

A. That is correct; yes.

X Q. 361. It wouldn't follow from that, that a man doing work on a job involving the use of a pair of plyers, would be a skilled mechanic, would it?

A. Not necessarily, no; it wouldn't be interpreted—

X Q. 362. Now, with reference to the rates of pay for carpenters, as I understand your testimony, at the outset of this job it was an open shop job, wasn't it?

A. Correct; yes.

X Q. 363. And the general contractor took up with you the matter of wage rates for carpenters, and he said—or took the position that, on form work, a carpenter should receive 70 cents an hour; that hatchet and saw men working on roofs, sheathing—and I think you mentioned something else?

1046 A. As I recall it, yes; miscellaneous framing.

X Q. 364. Miscellaneous framing, should receive somewhere around 80 cents, but you don't remember exactly.

A. I am not exact on that, but there was a slight sliding scale there.

X Q. 365. And that on the trim, the fine work, you didn't state the rate; what would that be, \$1.10?

A. Supposed to pay \$1.10 on that particular class of work.

X Q. 366. Now, you rejected that proposition, because you didn't think it was in accordance with the provision of the contract; is that right?

A. We asked of the general contractor's superintendent, at the time, if, in his opinion, were these form men considered unskilled, skilled or semiskilled? And the answer was, that they were carpenters who were entitled to a high grade of pay.

X Q. 367. Who gave you that answer?

A. The contractor's superintendent, Mr. C. W. Roberts.

X Q. 368. You didn't have any correspondence on that subject?

A. I don't recall of any. There may have been, but I don't recall.

X Q. 369. Did you have a ruling from Central Office on that subject?

A. No; we had no such ruling.

X Q. 370. That was the construction that you and Mr. Feltham placed on this contract?

A. That was the interpretation—that is, if a form builder was considered as to be a skilled trade in their respective trades—if he did, he come within \$1.10 per hour.

1047 X Q. 371. Now, Mr. Dodd, you gave, on direct examination, I believe, a definition of intermediate labor as applied to carpenter work, as I understood you?

A. That was my interpretation of it.

X Q. 372. If I understood you correctly—and I want you to correct me if I am wrong—you said it depended on whether it was an open shop or union job, in the first place; that on an open shop job, a helper or apprentice, or whatever you call this intermediate labor grade, would assist the carpenter by handing him nails, material and tools, and things of that kind, and might hold a piece of timber while the mechanic nailed it; and then you went on to say, as to a union job, the unions do not permit any hammering or sawing or nailing by these apprentices, except under the immediate supervision of the mechanic; is that about right?

A. Well, the apprentice generally works under the supervision of the mechanic.

X Q. 373. Now, let's get back to the open shop situation; does this apprentice, on an open shop job, do any hammering or sawing or nailing?

A. In connection with mechanical work?

X Q. 374. In connection with an experienced carpenter?

A. That has not been the case, in my experience, when there was an established wage scale prevailing.

X Q. 375. Then I don't understand your distinction. You said, in the case of a union, on the other hand, he wasn't allowed to handle these tools. Is he allowed to handle them on open shop? You may state the distinction between the two.

1048 A. I endeavored to explain that, on an open shop job, when there is a prevailing wage scale stipulated, in my past experience on other jobs than the Roanoke job—they haven't performed duties such as nailing, sawing and otherwise, as the apprentices did on the other, under what is known as a closed shop job.

X Q. 376. That is the reason that you would not allow a man to do any hammering and sawing and nailing at less than \$1.10, during the open shop period of this job, wasn't it?

A. It was never objected to a man on an open shop proposition, if you had there—any objection made to a man taking up a saw or sawing a board or nailing miscellaneously, but it was objected to him performing the duties that were ordinarily required by a carpenter, in this instance.

X Q. What else does a carpenter do, besides hammer and saw and nail?

A. I would say that was the major portion of his duties.

X Q. 378. I am trying to get your line of demarcation there.

By the COMMISSIONER:

•X Q. 379. You mean, if he did it continuously, he would be qualified; but if he did it just a little bit, he would not be qualified?

A. That is the decision; yes, sir.

X Q. 380. That is suggested as a thought that comes to me.

A. Yes, sir; that would be the distinction.

X Q. 381. In other words, if you hammer and saw a little during the day, you could be placed in the intermediate class?

A. Yes, sir.

X Q. 382. But if you hammered from the time you went on the job in the morning, and sawed and planed, you wouldn't be in the intermediate class; you would be classed as a higher grade?

1049 A. As a carpenter or form builder.

X Q. 383. I didn't know but what that might be the difference?

A. Yes, 'ir.

By Mr. KILPATRICK:

X Q. 384. Who would decide whether he had done so much of this work with carpenter's tools that he would be gotten over the line from an apprentice to a mechanic? Would that be for you to decide on this job, for example?

A. Well, in inspecting a job, we do not follow up each man daily.

X Q. 385. You couldn't?

A. It wasn't practical to do that, and I never went out on the job daily and asked each helper or intermediate grade man just what his duties were. If I passed, days following that day, and I discovered this same man nailing, sawing, and doing carpenter work, I would ask him what his name was, maybe, and I would refer to the pay rolls, and if he was shown on the pay roll as a laborer or helper, then I would check further into it.

X Q. 386. Then you wouldn't classify as an intermediate carpenter's laborer a workman, who, although competent to perform skilled work, was employed for and permitted to do only work normally required of this intermediate grade; would you?

A. Consisting of what intermediate grade?

X Q. 387. Well, you defined as an intermediate grade a man whose duty, primarily, is to just hand materials to the mechanic.

but within certain boundaries, which—well, I would say uncertain boundaries in using carpenter tools along with that work. Now, would you permit a skilled mechanic, who is capable of doing a skilled mechanic's work—would you permit him to work as a helper of that sort?

1050 A. Absolutely.

X Q. 388. At the intermediate wage rate?

A. Yes, absolutely. There is no indication, at all, that he was doing—for the simple reason that he was a mechanic, that he was doing a mechanic's work.

By the COMMISSIONER:

X Q. 389. Let me ask you a question?

A. Yes, sir.

X Q. 390. Suppose a man was a skilled mechanic, he could still be qualified as a laborer?

A. Absolutely. No reason in the world—a helper or whatever he could get.

X Q. 391. It seems to me the determining thing would be what he was doing?

A. That is what we establish his grade from; that is what we endeavor to establish his grade from. Now, the scope of the work embraced might be what is known as a helper, a carpenter's helper, but I don't have knowledge of it ever being definitely defined to any particular scope of work.

X Q. 392. I don't see how you could.

By Mr. KILPATRICK:

X Q. 393. Let me ask you this: You are familiar with the work involved in building forms for concrete, aren't you?

A. Yes, somewhat.

X Q. 394. What is the ordinary ratio of carpenters to apprentices on that type of work?

A. I would say, not in excess of 1 to 5.

1051 X Q. 395. 1 what?

A. 1 apprentice to 5 carpenters, and if it run above 1 to 5, I would say that most assuredly it wouldn't be necessary to have more than 5 in any one operation on the job. My personal opinion is that the job—if there was more than 1, there would be more apprentices than would ordinarily be required to perform that type of work.

X Q. 396. That assumes that these apprentices are not doing a lot of hammering and sawing, themselves?

A. Well, it wouldn't confine them to—

X Q. 397. I mean, under your definition of apprentices, they are not supposed to do a substantial amount?

A. They aren't supposed to do the same as a mechanic does, no, or they would be receiving mechanics' pay; he would no longer be an apprentice.

X Q. 398. Even though he were not so skilled as a mechanic and were working along him and under his direction?

A. If he wasn't so skilled as a mechanic, he should not be performing the exact duties required of the mechanic; he would be out of his classification.

X Q. 399. Did Mr. Blair employ any men on this job who were actually doing any hammering or sawing and paying them less than \$1.10 an hour, in the early part of the job?

A. There appears on the pay rolls a considerable number of men, although they are classified as unskilled labor—for illustration, we checked two weeks every pay roll and we found approximately 30 men who were classified as laborers, ranging in pay from 70 cents down to 45 cents.

X Q. 400. How many of those men were doing carpentry work?

A. Well, now, that I am unable to answer.

X Q. 401. What pay rolls were those?

A. I couldn't recall those.

X Q. 402. Is this a recent check?

A. Yes, every week.

X Q. 403. Do you have those pay rolls here?

A. They are in evidence, I think, but what those men were doing, other than unskilled labor, it isn't reasonable to assume that the contractor was—had gone into charity to pay a laborer 70 cents an hour, when they were only performing 45 cents an hour duty. I don't think that would be reasonable, would you, to assume, if I may ask?

1053 X Q. 404. I am delighted to testify about it. There is one thing we are consistent about: These are the minimum rates and Mr. Blair did pay some of his common labor more than 45 cents an hour, for common labor alone; is that right?

A. At various times I did check—I can't recall the names, but I found these men, at such times as they were using open shop men, working with the carpenters. I didn't stand beside John Doe, for instance, all day.

X Q. 405. What is that exhibit number, that pay roll?

A. I don't know. It doesn't indicate what it was; it merely says labor, and it was as high as 70 cents an hour.

X Q. 406. Now, will you find on that exhibit who was doing carpentry work and getting the intermediate wage rate?

A. I cannot identify the men as doing carpentry work from this pay roll, but, however, I can cite instances when you did pay in excess of 45 cents an hour.

X Q. 407. But you can't tell us what they were doing?

A. No.

X Q. 408. I want to make that clear!

A. No; it has been too long ago for me to remember.

X Q. 409. Then if it should be established by Mr. Blair's records that he paid all men who were handling carpenter tools on this job \$1.10 an hour, it wouldn't be as a result of any ruling on your part, would it, because you did permit some apprentices to handle tools on carpentry work?

1054 A. We did permit it, a reasonable amount of it, yes.

X Q. 410. If he paid all of them \$1.10, it would be, as you term, charity on his part?

A. That is right. In other words, that would mean 10 apprentices and 2 carpenters on a project, and that we would not permit.

X Q. 411. Now, you have testified, I believe, that you checked these pay rolls and found the names of 308 men that apparently had not been secured through the Reemployment Office in Roanoke?

A. I beg your pardon on that. I don't think I made that exact statement.

X Q. 412. I may have misunderstood you?

A. I said I was advised by the U. S. Department of Labor Employment Service, in letters to our office, of that number of men who had not been issued cards through the Reemployment Service for this project.

X Q. 413. Do you recall whether any of them were employees of the Roanoke Marble & Granite Company, or not?

A. They usually were sent out. In other words, in his covering letter, he would say, "On Algernon Blair's pay roll, the following men have not been issued cards through this service," and he lists them, and he handed down any other subcontractor that involved the work of Algernon Blair.

X Q. 414. The 308 would include, then, the employees
1055 of the Roanoke Marble & Granite that he certified to?

A. Yes; but he had a cross check on it from the unions, who issue them cards. He was forwarding, at the same time, a list of the union men who were employed on the job, in order not to get the union men listed in his letter as not being issued a card, because the Reemployment Service does not issue cards to union men.

X Q. 415. I understand that. So the 308 would not include any union men?

A. No.

X Q. 416. Now, the 308 would include any Roanoke Marble & Granite employees found there?

A. Other than union men. :

X Q. 417. Other than union men, who did not have cards?

A. That is right.

X Q. 418. Or the Reemployment Office did not have any records of having given them cards?

A. Yes.

X Q. 419. The Roanoke Marble & Granite Company was a local concern in Roanoke?

A. Yes.

X Q. 420. And when these men were checked up in this fashion by you, didn't those men, those union men go back and register with the Reemployment Office and become eligible for employment on this job?

1056 A. They may have; but, however, that didn't enter into it at that time.

X Q. 421. Let's not argue about it?

A. They may have, I wouldn't state.

X Q. 422. That same thing is true as to the Virginia Bridge and Iron Company, that did the structural steel out there?

A. They were a local concern, yes.

X Q. 423. Now, you don't remember how many employees of these two local concerns were included in your 308?

A. In checking the ledgers, I would conservatively estimate that the number of employees mentioned by the Reemployment Service—that 75 percent of them involved were Algernon Blair Company's employees.

X Q. 424. Did you find, in your investigation of any of those instances, that your records or the employment records were wrong, and that some of these 308 actually came out with cards from the Reemployment Office?

A. We found in some instances, we also investigated further and found a lot of registering down there with false and unknown addresses given to the Reemployment Service.

X Q. 425. Let's get to one subject at a time. What I am asking you now, Mr. Dodd, is whether or not Mr. Blair did not establish to your satisfaction that a number of men included in this 308 actually had come out with cards from the Reemployment Service, prior to being employed?

1057 A. No, not any that were listed by the Reemployment Service. In a number of cases—

X Q. 426. Then did he not proceed to discharge all the men who you established to his satisfaction, or to your own satisfaction, had not come out with cards from the Reemployment Office?

A. He did not, in many instances. I don't recall of any being discharged.

X Q. 427. Wasn't it his duty under the contract to discharge them, if you were right, that they weren't local men?

A. It was worked in this manner: Mr. Roberts there made the request of the Reemployment Service to register these men, these particular men who were found without cards. That is also in the record. In our records are photostatic copies of Mr. Roberts' request to the Reemployment Service to register particular persons that had been employed by him previous to coming to Roanoke.

X Q. 428. I don't get the significance of that. Was he deceiving the Reemployment Service in telling them that? He was telling the truth, wasn't he, when he said they had been employed on prior jobs?

A. He may have been, but on the other hand, Mr. Roberts was well aware of the fact that it was a violation of his contract to request or permit of them working until such time as local labor was used—to use other than local labor on the job.

1058 X Q. 429. It was up to the Reemployment Service in Roanoke to send the men out, wasn't it?

A. That is correct.

X Q. 430. Now, getting back, for the moment, to the question of steel rodmen, you testified, I believe, that they are—or did you? I am a little confused about this. Did you testify that they are classified in some localities as semiskilled labor?

A. No, sir, not me; no; never in one instance.

X Q. 431. You don't know anywhere where they have been classified as—

A. I have worked from Maine to the Gulf of Mexico, to New Orleans and back, in the southwest, and I have never heard of a case where they were classified that way.

The COMMISSIONER. He has testified that he did not know from Maine to the Gulf of Mexico; and vice versa, and then you want to ask him if he wants to stick to that.

Mr. KILPATRICK. That is all right. I will let it go.

The WITNESS. That is my answer, every job I have been on.

The COMMISSIONER. That is the way I understood you.

The WITNESS. In fact, in the prosecution of Government purchase and hire work, we employ skilled men for placing reinforcing rods and pay them the skilled rate.

1059 By Mr. KILPATRICK:

X Q. 435. Mr. Dodd, did you ever file with the Public Works Administration, or give to one of its employees, an affidavit charging Algernon Blair with violations of his contract in constructing the work at Roanoke?

A. I don't get your question. Did I ever file with the Public Works Administration—

X Q. 436. Yes, any sworn charges?

A. No, sir.

X Q. 437. Did you ever give it to any officer from the Public Works Administration, who came to interview you?

A. We had a Public Works officer on the job site during the construction of the Roanoke project, and it was my official duty to point out to him such apparent violations of the contract.

X Q. 438. Did you give him a written statement, or sign a written statement and swear to it?

A. No written statement, or sworn to.

X Q. 439. I want to ask you specifically if you have ever sworn to a statement charging that, on the Roanoke job, Mr. Blair violated his contract by contracting for labor only on the masonry work?

A. I never remember such an affidavit.

X Q. 440. All right, did you, in such affidavit, charge that he had violated his contract by employing skilled labor and paying them the unskilled rate?

1060 A. No, sir; no such affidavit do I recall being sworn to.

X Q. 441. Did you, in such affidavit, charge him with having violated his contract by destroying the time cards, making it impossible to determine the wages due?

A. I recall no sworn affidavits to any department of any such description as mentioned by you.

X Q. 442. Were any of the charges that I have mentioned, true?

A. Are they true?

X Q. 443. Yes?

A. Are you asking me, did I make this affidavit?

X Q. 444. Yes.

A. I didn't make the affidavit. I answered that, I think.

X Q. 445. Now, did you, in such affidavit, ever state—

Mr. JULICHER. Are you withdrawing that other question of yours, Mr. Kilpatrick?

Mr. KILPATRICK. I think he has answered my question.

Mr. JULICHER. I do not think he has. There is one particular question he did not answer, if I recall.

(Here followed discussion off the record.)

By Mr. KILPATRICK:

X Q. 446. As a matter of fact, did Blair's organization destroy any time cards, making it impossible for you to determine the wages due the workmen?

1061 A. That I don't recall at this particular moment.

X Q. 447. Now, let me ask you this: Did you, in any such sworn statement, ever charge that, on account of poor workmanship there, you were obliged to reject and condemn approximately \$30,000 worth of concrete brickwork, and that it was required that we have 3 air compressors and operate 4 air hammers, working 16 hours a day, for a period of 9 days, to tear out that work?

A. I have never made no such affidavit as that. There is some of it that is correct, however.

X Q. 448. Let's see how much of it is correct. Was he required to tear out \$30,000 worth of concrete?

A. I am not in position to estimate the quantity in dollars and cents at this time.

X Q. 449. Were you ever in position to?

A. I could have at the time it was being performed.

X Q. 450. Did you ever give a monetary estimate on it?

A. No.

X Q. 451. All right, in taking out this deficient concrete, did the contractor use 3 air compressors, which operated 4 hammers?

A. I don't remember how many air compressors he used, but he did use an air compressor; whether it was in the plural or otherwise, I can't recall at this date.

X Q. 452. How many air compressors were on the job?

A. That I don't remember. That has been considerable time, 5 years ago.

1062-1063 X Q. 453. Would you say that, in tearing out the defective concrete, it was necessary to work 16 hours a day for 9 days?

A. Well, he worked 16 hours a day—for how many days I don't know—including Sundays, carrying out this concrete.

X Q. 454. Do you know how many workmen were employed?

A. I couldn't state that at this date, Mr. Kilpatrick.

X Q. 455. At any rate, you are positive you have never made oath to such affidavit?

A. I recall no affidavit of that description made by me.

X Q. 456. Did you ever file any protest with any Government department against the awarding of a contract to Algernon Blair?

A. No, sir; positively. I know that.

X Q. 457. Mr. Dodd, you testified at length as to your experience and your qualifications and the number of jobs or contracts that you have worked on, and I believe you stated that, just prior to this job, you were employed as Government inspector at the Veterans' hospital job at Augusta, Maine?

A. That is correct.

X Q. 458. Was there any tile and Terrazzo and marble work involved in that?

A. Yes, sir.

X Q. 459. Prior to that, there was a hospital at Columbia, South Carolina?

A. Yes.

X Q. 460. The same thing?

A. Practically the same amount as there was at Roanoke, a similar job.

1064 X Q. 461. In your experience and during your term as inspector with Army engineers, did you have occasion to supervise work in which there was involved tile and Terrazzo and marble work, such as in the present case?

A. Not with the Chief of Engineer's office, but I was later, as you undoubtedly refer to, transferred to the Quartermaster—the Construction Service of the Quartermaster, and there I did.

X Q. 462. Of the War Department?

A. Yes; and there I did.

X Q. 463. What places, what particular jobs were those?

A. Langley Field, that is the headquarters air base, where we constructed some 120 quarters there that had tile in them, and barracks, hospital building and various types of buildings.

X Q. 464. Does that involve the same class of buildings, the walls, etc.?

A. Yes; at Walter Reed Hospital, Fort Humphrey, Virginia, and down here at Bolling Field.

X Q. 465. Now, prior to that, when you were employed by private contractors in the actual supervision of construction work, did you have occasion to supervise any marble and tile work?

A. Only generally, Mr. Doyle. That was usually subcontracted out and we let it subject to the inspection of the architect, or whoever it may be. We only generally coordinated it.

1065 X Q. 466. Now, I take it, Mr. Dodd, you are familiar with the Government specifications in this particular case, Plaintiff's Exhibit 2-A; is that correct?

A. Well, I wouldn't say, at this time, I am thoroughly familiar with them.

X Q. 467. Were you, at that time?

A. I thought I was, at least.

X Q. 468. Did you have these specifications on the job?

A. I did, sir.

X Q. 469. Did you follow them?

A. Yes; as far as my ability went.

X Q. 470. Did you have occasion to examine them, prior to the time this contract was let?

A. Not prior to the letting of the contract. I did have occasion to examine them between the letting and such time as the contractor—

X Q. 471. Let me ask you, as a part of your official duty as Government inspector, that is, doing supervisory work, you were to supervise the work described in these specifications and contract?

A. Yes; that is correct.

X Q. 472. And you are familiar with this provision, the one that appears on page 6 (a) which says: "The minimum hourly wage rate established as required by Section 54 of Bulletin 51"—

A. That is the P. W. A. Bulletin 51.

X Q. 473. P. W. A.; yes?

A. Yes; that is what it refers to.

1066 X Q. 474. I believe that P. W. A. Bulletin 51 is in evidence here as Plaintiff's Exhibit 38. I show you Plaintiff's Exhibit No. 38; that is Bulletin No. 51?

A. That is right.

X Q. 475. It says on the face of it, "September 7, 1933." That is the issue that accompanied the specifications?

A. As well as I remember; yes. I didn't check back, but it appeared to be.

X Q. 476. It is a fact that that bulletin was later revised, isn't it, in a later issue of it in 1934?

A. I don't recall of having any revised P. W. A. Form 51 during the life of the Roanoke job. Possibly there may have been one and it didn't reach us, but I don't recall any revision of it.

X Q. 477. Now, that bulletin describes, for the use of bidders, and particularly in this contract there was incorporated Section 54, the minimum wage rates for the different zones?

A. Yes, sir.

X Q. 478. And describes several zones, and Virginia is in a zone?

A. The central zone, as I recall.

X Q. 479. And on page 8, it describes those rates as for the central zone: Skilled labor, \$1.10, and unskilled, 45 cents; is that correct?

1067 A. That is correct.

X Q. 480. And it also provides, in paragraph 4 of Section 54, that "The above designated minimum rates are not to be used in discriminating against assistants, helpers, apprentices, and experienced labor who work with and serve skilled journey-men mechanics, and those are not to be termed upskilled labor;" is that correct?

A. Yes, sir.

X Q. 481. And you were familiar with that?

A. Yes, sir.

X Q. 482. Now, did that apply to the subcontractor on tile, terrazzo, and marble work?

A. That would apply to any subcontractor; anybody on the job site, under the journeymen.

X Q. 483. Did that apply to the Roanoke Marble & Granite Company, this particular case?

A. It did.

X Q. 484. Now, you were present at Roanoke at the time Mr. Wilson testified, the president of Roanoke Marble & Granite Company?

A. I was, sir.

X Q. 485. You heard his testimony?

A. I did, sir.

X Q. 486. You also heard the testimony of his foreman, Mr. Godbey?

A. I did, sir.

1068 X Q. 487. And also the testimony of Mr. Garlick, a skilled
1069 mechanic?

A. I did.

X Q. 488. Those two men were employed on this particular job, were they not?

A. They were.

X Q. 489. You also heard the testimony of Mr. Marsteller, an independent contractor on tile and Terrazzo work?

A. I don't recall definitely of his testimony, but I do the rest of them. It is possible he was there.

X Q. 490. You know he testified there?

A. I couldn't recall definitely. I may have been out of the room at such time as he testified.

X Q. 491. Have you had occasion to read his testimony since then?

A. I haven't read the Roanoke testimony since I have been in Washington here. I merely glanced over it casually.

X Q. 492. But you have read some of the testimony?

A. Not of the portion of the Roanoke Marble & Granite; no; because I haven't been able to find sufficient time since being here to read it.

X Q. 493. Now, you heard three of those gentlemen testify to the custom in the trade of employing experienced helpers, assistants, and so-called improvers, or skilled mechanics, did you not?

A. I did.

X Q. 494. And you heard them describe the duties of those experienced helpers?

1069 A. I think I did at the time; yes, sir; but not exactly—
I do not recall the exact testimony of them.

X Q. 495. Mr. Wilson testified that he started the tile work on this job early in September; is that according to your recollection?

A. That I would have to verify from our records. It sounds possible correct.

X Q. 496. I think the records in evidence, or your log shows that he had tile setters there as early as August 24. Now, is it a fact, or do you recall that they installed some tile work in Building No. 7 for your inspection, before they started production?

A. Before they actually started—bring a minimum force on the job, you mean?

X Q. 497. That is correct.

A. I recall that he did lay up a sample there.

X Q. 498. Now, could you refer to your log and tell us about when they started production?

A. It may appear here.

X Q. 499. About September 1, I think.

A. I have the pay roll here of August 24, the certified pay roll, where he was working at that time.

X Q. 500. You have the pay roll?

A. I have a copy, as I recall it. I will get it. August 30? The week ending August 30.

X Q. 501. The weekly pay roll?

A. Yes; the week endings. You see, August 30, this 1070 is. Whether this is the first one, or not, I don't know.

X Q. 502. You haven't got the other pay rolls for the other weeks, have you?

A. No; I haven't. This shows the exact ratio of skilled and semiskilled.

X Q. 503. Now, this shows the pay roll of August 30, 1934, and shows that he had employed on the job three men designated "M"; is that a mechanic?

A. Yes. This man up here [indicating] was supposed to be a foreman. In other words, you had three mechanics working and you had nine semiskilled and unskilled grades. That is a ratio of 3 to 1 on that pay roll.

X Q. 504. Well, now, just a minute. He had one man by the name of Marshall, who was designated "IMP." What is that?

A. Improver.

X Q. 505. And paid him 60 cents; is that correct?

A. That is correct.

X Q. 506. You have got 8 other men, whose wage rate is 45 cents; is that correct?

A. Yes, sir; the common practice, as I understand, with tile work in relation to improvers, is 1 improver to 4 mechanics.

From what information I have been able to gather and available to me, that is commonly used. In fact, since the completion
1071 of the Roanoke job, I installed, upon the purchase and hire basis—purchasing our own materials and hiring our own labor—several times the amount of tile and marble that was involved in the Roanoke job, that was the method under which I operated: 1 improver to 5 mechanics; and, con[sub]sequently, your Mr. Godbey and Mr. Garlick worked for me. I should say 4 times the amount of marble and tile work that was involved in the Roanoke job, that I done a purchase and hire basis, and Mr. Garlick, two Mr. Garlicks and Mr. Godbey were employed by me at Kecoughton, Virginia.

Mr. DOYLE. I move to strike that, because it is not responsive to the question that I asked.

The WITNESS. I merely answered that for the purpose of my opinion.

The COMMISSIONER. I think I will deny the motion. It is not relevant to your question, but might throw some light on the general subject we are pursuing.

By Mr. DOYLE:

X Q. 507. Well, now, in the custom of the trade, for a subcontractor to start tile work, would it be necessary to employ labor to move the tile to that part of the building where the work was begun?

A. It would be necessary to employ labor to move the tile; yes; but as it happens—

X Q. 508. Just a minute.

A. All right, sir.

1072 X Q. 509. Now, referring to your pay roll there, I notice that you have 9 men on that paid 45 cents an hour. What were those men doing for the week of August 30?

A. What class of duty they were performing?

X Q. 510. Yes.

A. I can refer to them all, the daily log here, as to what was being done at that particular time.

X Q. 511. Would the log show?

A. I think possibly it will.

X Q. 512. Let's put it this way: They weren't laying tile, were they?

A. That I wouldn't be able to state, without referring to the log.

X Q. 513. All right.

A. I may state this has been some 5 years ago and it is rather hard to remember what one group of men was doing on a particular Friday, or any other day. Setting interior tile base and border; yes, sir.

X Q. 514. Does that say who they are? .

A.. It only mentions in a routine manner, "Setting interior tile base and border."

X Q. 515. For the week of August 30?

A. Yes; August 30, 1934.

X Q. 516. It does not say that the 9 men at 45 cents were setting tile base and border?

1073 A. It makes no mention of how many setters you had on this day.

X Q. 517. How about any other place. Doesn't it say right here [indicating], tile setters, 3?

A. Yes, 3 tile setters.

X Q. 518. You do not say those other 9 men were setting tile?

A. Well, I would say it was a considerable ratio of men.

X Q. 519. Now, isn't it a fact that the contractor was required to employ common labor to move his materials for the mechanics, that are laying tile?

A. That is my interpretation of the contract; yes, sir.

X Q. 520. And aren't such materials as sand and mortar and tile—isn't that a considerable part of the labor necessary to constitute that job, before you start it?

A. That is a portion of it; yes. I wouldn't say a considerable portion.

1074 X Q. 523. Well, now, I will show you, Mr. Dodd, Plaintiff's Exhibit No. 87, which is a summary of the labor, that was offered in evidence through Mr. Wilson in Roanoke, and to which he testified that he made this directly from his pay rolls. That summary shows, the week of September 7, the employment of 113½ mechanic hours, 56½ helper hours and 261½ common labor hours. That also shows, for the week of September 16, the employment of 93½ mechanic hours, and 23¾ helper hours at 60 cents—

A. That sounds like a fair ratio.

X Q. 524. And 800 common labor hours at 45 cents. Now, for none of the weeks that followed there does it show any employment of helper hours at 60 cents. Now, is that according to your recollection?

A. I couldn't recall that. I merely have taken this pay roll out as an example; it was in my personal file at the time I made the report on your case.

X Q. 525. Do you recall, when they first went on the job, that this contractor did employ semiskilled labor, the so-called improvers or helpers at 60 cents an hour?

A. As I recall, he did, and I think the pay rolls will show he had 2 mechanics start on the job——

1075 X Q. 526. Just a minute. The pay rolls, you would say, are the best evidence?

A. Yes, sir.

X Q. 527. Now, he has testified, and it is in evidence, that after the week of September 16, he did not employ any so-called helpers at 60 cents per hour. Now, do you recall the ruling that you made to Mr. Godbey and Mr. Wilson, at or about that time, that no intermediate labor should be employed on this job?

A. I made no such ruling as stated by you; I had no authority to make such a ruling to a contractor or the representative of a contractor. In the event that you desire to make a ruling of that description, you make it in letter form to the general contractor.

X Q. 528. Now, let me ask you this: You heard Mr. Wilson's testimony in Roanoke, and he testified that he and Mr. Godbey, together with Mr. Roberts, the general superintendent, called at your office, and there you made the statement that he could not use semiskilled or experienced helpers in his subcontract on this job. Do you say that isn't a fact?

A. I say that isn't a fact, and furthermore, I would have——

X Q. 529. Just a minute.

A. No; I made no such statement.

X Q. 530. You made no such statement?

A. That no semiskilled could be used. I did, on
1076 one occasion, state he would not be permitted to use a ratio of 2 mechanics and 12 to 15 improvers. I did state that.

X Q. 531. Now, isn't a fact that he and Mr. Godbey, together with Mr. Roberts, called at your office, at or about that time, the middle of September, in this particular matter?

A. I don't recall he and Mr. Godbey——

X Q. 532. Where did this discussion take place? Where did they interview you?

A. I don't recall even the discussion taking place. If there was a discussion, it would have been with the general contractor.

X Q. 533. Did Mr. Roberts represent the general contractor?

A. Yes; he did.

X Q. 534. You said you never discussed it with him—you never discussed this question with Mr. Wilson or Mr. Roberts?

A. I beg your pardon. I never said I didn't discuss it with Mr. Roberts. I stated I never made the statement that no intermediate grade of labor could be used, but I did make a statement to the effect that an unusual proportion, or ratio, of improvers could not be used with a small amount of mechanics, the improvers doing mechanics' work.

X Q. 535. Just what does an improver do?

A. As I understand it, they are supposed to grout the tile, put the grout in the tile and wipe the tile, and after they grout
1077 it, they use excelsior or burlap and rub off the excess grout, and wash it, and prepare the mortar for the tile setter, the mortar that is on the wall, and various things.

X Q. 536. Would they procure the tile for the mechanic or tile setter?

A. In my interpretation of it, they would. After it was placed in the building, you mean?

X Q. 537. Yes?

A. If it was placed in boxes in the building; yes, sir. For allusion, say a mechanic was working in this room and he said to a man, "I want some tile of such and such size," he will get it; and they will soak it and place it for the tile setter, and after the tile setter has placed his tile, they will grout it for him and wipe it with bags of excelsior, whichever they may be using.

X Q. 538. Will they also cut it for him, at times?

A. I wouldn't be able to literally to place an interpretation of cutting tile on an improver. In fact, I am not—

X Q. 539. Now, you say they would procure it, select it, handle it, soak it, hand it to the skilled mechanic if he needs it?

A. That is right.

X Q. 540. You are in doubt whether or not they would cut it for him, or not?

A. I wouldn't be in position to state whether they would cut it, or not.

1078 X Q. 541. And they would grout it after it is placed, and by grouting, I understand is cleaning off the cement—

A. It is a pure mixture of cement and water, and they mix it up in a consistency similar to cream, or a thick consistency, and pour it in the joints and wipe it on the wall, and after the grouting is dried, they wipe it off with a gunny sack or excelsior, whichever it may be.

X Q. 542. Clean it off?

A. Yes.

X Q. 543. And they also mix the mortar for the tile setter?

A. Yes; they also mix the mortar.

X Q. 544. What do those particular duties help the mechanic to do? Of what value is that to the skilled mechanic who is setting the tile?

A. Well, it would be of the same value of any other helper in any other trade.

X Q. 545. Could a skilled mechanic set more tile during the day, if he had that assistance; would that increase his production?

A. It would be reasonable to assume it would.

X Q. 546. In other words, the skilled mechanic would not have to stop and soak his own tile?

A. That is correct.

X Q. 547. Or cut it?

A. I wouldn't say cutting, whether an improver would
1079 be permitted to cut tile, or not.

X Q. 548. He wouldn't have to stop to mix his own mortar?

A. That is right.

X Q. 549. Is that some sort of technical job, mixing this mortar?

A. I wouldn't say it is a technical job.

X Q. 550. Does it have to be done with care?

A. Well, there has to be reasonable care.

X Q. 551. It has to be of the right consistency?

A. Yes, sir; reasonable care.

X Q. 552. You can't leave that just to common labor?

A. I have known common labor to mix mortar and plaster on these projects—I mean on this project here.

X Q. 553. How do you know that?

A. Well, they used common labor for mixing the mortar and plaster throughout the job. I don't see why the tile setters, if it becomes necessary, couldn't mix the same mortar.

X Q. 554. I understand they worked under rather arduous conditions. Ordinarily, an experienced helper does mix mortar. Now, doesn't that employe, an experienced helper, mix mortar for 3 or 4 units at a time?

A. My experience has been, in setting tile and floor, ceramic floor and wall tile, is that the mechanics usually work in pairs.

X Q. 555. The mechanics usually work in pairs?

1080 A. Yes, sir.

X Q. 556. That is, one mechanic and a helper?

A. No; my experience has been, heretofore, if you had a room this size, you would have 2 mechanics, and with that mechanic, and working with him, there may be an apprentice or improver, whichever you term them. I wouldn't like to define the two. But there would be one improver, we will say, to four men, doing the miscellaneous selection of the tile and—

X Q. 557. Let's get back to your illustration. In a room of this size, would you say that you would have 2 mechanics setting tile in here, and one improver?

A. In a room of this size, 4 mechanics could be—if it is wall tile, could easily work, with ample space.

X Q. 558. How many improvers would you have for those mechanics?

A. One improver or apprentice should be able to serve those 4 mechanics.

X Q. 559. You mean one improver would mix the mortar and select the tile, soak the tile, and hand it to 4 mechanics, and grout the tile and clean it off for those 4 men; is that your interpretation of it?

A. With the assistance of such unskilled labor that he may have.

X Q. 560. What would the unskilled labor do?

A. He would probably help cart the tile in and place
1081 it in the places and shovel the sand and mortar and cement for the improver.

X Q. 561. In other words, the common labor is used ordinarily to move the materials for the skilled and semiskilled workmen; is that correct?

A. Yes; backed up by common laborers.

X Q. 562. We are agreed that is for the use of the common labor, I take it, in the common usage of the trade?

A. Yes.

X Q. 563. Now, you heard the testimony of Mr. Wilson, Mr. Godbey and Mr. Garlick, who testified that it was the custom and usage of the trade for each skilled mechanic to have an experienced helper, or so-called improver, to assist him, individually?

A. I think I did; yes, sir.

X Q. 564. Now, you also heard Mr. Wilson testify that he had estimated on using that sort of labor in this particular contract?

A. Yes, sir.

X Q. 565. You understand it is also the custom of the trade, and so testified by these witnesses, that in any great amount of tile work, they would employ a so-called unit system; that is, they would have several units, composed of one mechanic and one helper, with perhaps an extra helper or improver to mix the mortar? Do
you recall that testimony?

1082 A. I recall testimony similar to that; yes, sir.

X Q. 566. And Mr. Wilson testified, and also Mr. Godbey, that that was what they planned to use when they got into production on this job; you recall that?

A. Yes, sir.

X Q. 567. Now, following this discussion that you had about the middle of September with Mr. Wilson and his foreman, Mr. Godbey, and Mr. Roberts, the general supervisor, did he not comply with your ruling and discharge all of the semiskilled labor that he had, with the exception of two or three?

A. The only time that I can recall of Mr. Wilson discharging any of his employes was after the start of the job, at which time all of his men had not been employed through the proper channels as required by the contract specifications.

X Q. 568. I think that is a fact?

A. I did require him to discontinue the service of those men until such time as he registered them in compliance with the contract requirements down there.

X Q. 569. I think that is the fact. It is true, isn't it, that when he undertook this contract, he understood that, being a local concern, he could employ his own men, without going through the employment office; isn't that correct?

A. That I wouldn't like to say, Mr. Doyle. He had the specifications and the contract before him to inspect, as well as I did.

1083 X Q. 570. He was a local concern?

A. Well, regardless of that, he had to abide by the contract requirements as well as any other concern did.

X Q. 571. Then he did proceed to comply with those regulations, and have those men qualified at the employment office?

A. At such times as I notified the general contractor they could no longer work them, he did; yes.

X Q. 572. That was about the middle of September?

A. I don't recall that date, that he was notified—not Mr. Wilson, but the general contractor was notified in writing, in letter form.

X Q. 573. Now, that didn't apply to the mechanics, because they were union men?

A. That is right, that is correct.

X Q. 574. But only applied to the semiskilled labor?

A. That is right.

X Q. 575. And common labor?

A. That is right.

X Q. 576. Was the common labor both colored and white?

A. There was colored and white common labor employed on the job. What Mr. Wilson had employed at that time, I don't recall.

X Q. 577. Now, the same conditions with respect to the custom and usage of the trade, and the employment of these experienced helpers and improvers—the same condition applied
1084 in the Terrazzo work, did it not?

A. I have never known of a designation of any helper known as Terrazzo improver. In my experience, I never had heard of such a designation as Terrazzo improver. I don't know what would be his duties. I may be ignorant on that part, but I never heard of such a thing as a Terrazzo improver.

X Q. 578. Isn't it a fact that it is the custom of the trade to use experienced helpers to run those grinding machines for the Terrazzo work?

A. That is correct.

X Q. 579. That is correct, isn't it?

A. That is what I understand; yes, sir.

X Q. 580. Now, isn't it a fact that skilled mechanics, in performing marble work, employ experienced helpers and improvers?

A. In instances, and in other instances, no; in some instances, yes.

X Q. 581. You heard the testimony in Roanoke that they used such help, or semiskilled men?

A. That is correct, but I—

X Q. 582. And that they did the drilling of the holes in the marble for the skilled mechanics; do you recall that?

A. I don't recall that testimony.

X Q. 583. Well, is that a fact?

A. But I should say that the drilling of holes in marble work is most assuredly no helpers' job, because you can easily destroy a piece of marble by just one twist of the drill bit and the piece of marble is gone, and I couldn't see how any sane, sensible contractor would permit helpers on the drilling machine—I mean for his own protection.

X Q. 584. Now, that is your own opinion is it? You have never seen that done anywhere?

A. Not to my knowledge; no, sir. I wouldn't permit it, if I was doing it.

X Q. 585. Did they not use experienced helpers to help them set the marble in place, put in the angle irons and dowel pins?

A. If I may state, I have a project that the marble is being set on at this time—

X Q. 586. Answer the question?

A. No.

X Q. 587. Then if both Mr. Wilson and Mr. Godbey testified to the contrary, that would be a difference of opinion?

A. That would be their opinion, but that wouldn't be the ruling opinion.

X Q. 588. You heard that testimony?

A. I heard their testimony; yes.

X Q. 589. Now, let me see if I get this correctly: Plaintiff's Exhibit 87, which is a summary of the pay roll of the subcontractor in this case, shows the classes of labor employed, per hour, for the weeks from August 24 to February 15, and shows that no helpers at 60 cents an hour were employed after the week of September 16. Now, do I understand you to say that you ruled that they might use some intermediate labor on this job?

A. Not by me. It was never ruled that the contractor—

X Q. 590. I mean, what did you tell Mr. Roberts; what did you rule, yourself?

A. If I may be permitted to continue what I was just starting.

X Q. 591. Yes; I thought you were quoting somebody else?

A. I did rule that improvers would not be permitted to do the work ordinarily performed by mechanics, and they would not be permitted to be put in separate buildings, without the supervision of the mechanic, the tile setting mechanics on the project. But there was no ruling handed down to the effect that the intermediate grade of labor would not be permitted.

X Q. 592. All right, then, it was their privilege, under your ruling, to employ some semiskilled labor or improvers?

A. On a reasonable proportion, yes; that is correct.

X Q. 593. And what do you say the reasonable percentage was, according to your opinion?

A. I would say not in excess of 1 to 4.

X Q. 594. 1 to 4?

A. 1 to 4; yes, sir.

X Q. 595. But those 4 mechanics would necessarily have 1087 to be working on one piece of work, wouldn't they, to have an improver serve them directly? In other words, you couldn't have 2 mechanics in this room and 2 outside, and have them both served by 1 improver?

A. I may not quite understand your question, Mr. Doyle, but I am referring to them under similar conditions as apprentices.

X Q. 596. I am asking you what you ruled down there on the job?

A. That is right; in other words, as apprentices. He would have been permitted, if he desired, to work the necessary helpers with his mechanics at not less than the minimum wage scale, but he would not have been permitted to work improvers on work ordinarily and commonly required of mechanics.

X Q. 597. Now, let's see. What would that work be?

A. That would be such as setting tile, placing tile, laying out the tile.

X Q. 598. Setting, placing, and laying out the tile?

A. Yes; laying it out generally under the supervision of the mechanic, which was the case the first two days that he was on the job, these men were found in buildings, alone, with no mechanics in the building.

X Q. 599. Where were they?

A. They were the men on the first week's pay roll that was sent in.

1088 X Q. 600. What building?

A. That I wouldn't recall. That is in the official correspondence in the record. I think it was 7 Building that we started on.

X Q. 601. Turning to your pay roll of August 30, you have only one improver listed there?

A. That is true; yes.

Mr. JULICHER. That is not our pay roll, that is your pay roll.

Mr. DOYLE. It is in his possession.

Mr. JULICHER. We have no way of knowing it is correct, or not.

The WITNESS. I see they were classified at 45 cents an hour in tile work.

X Q. 602. Where was that?

A. As I recall, I believe we started in Building 7, if I am not mistaken. I would have to refresh my memory by the records.

X Q. 603. And at what time?

A. What date?

X Q. 604. Yes.

A. I couldn't recall that.

X Q. 605. Was it the week of August 30?

A. I am not able to state. There has been considerable time elapsed since then.

1089 X Q. 606. Was it during the first two weeks of September?

A. It was during the first two days of his work on the job.

X Q. 607. The first two days?

A. Yes; not the first two weeks, but the first two days.

X Q. 608. You don't recall the names of the men?

A. I do not; no, sir.

X Q. 609. Did you speak to Mr. Godbey or Mr. Knox about it?

A. I don't remember whether Mr. Knox even was on the job.

X Q. 610. What kind of tile was it they were setting?

A. It was quarry base and border tile, as I recall it, floor or border and base tile, quarry tile.

X Q. 611. It is your statement that he was employing common labor to set quarry, base and border tile?

A. He was using it for that purpose, at that time.

X Q. 612. Using it for that purpose the first two days on the job?

A. Correct.

X Q. 613. He employed semiskilled or experienced helpers up to about September 16, the date you had this conference?

A. Yes, sir.

X Q. 614. Thereafter, he didn't employ any semiskilled helpers; is that correct?

1090 A. From your statement. I hadn't checked it.

X Q. 615. Now, it is a fact that quarry base and border tile was a large part of this contract; isn't it?

A. A considerable portion of the contract involved the installation of quarry tile.

X Q. 616. The Terrazzo work wasn't very much?

A. A small portion, a very small amount of Terrazzo work.

X Q. 617. And there was also considerable quarry tile floor?

A. There was; yes, sir.

X Q. 618. And there was a large amount of ceramic tile floor?

A. Well, I wouldn't say a large amount. In proportion to the size of the job, it wasn't a large amount, but there was a considerable amount of border and wall and floor tile.

X Q. 619. 18,661 square feet, was there not?

A. I haven't taken off the quantity. I wasn't interested in the exact quantity of the project, the size that was contracted for by the contractor.

X Q. 620. That is shown by Mr. Wilson's estimate, Plaintiff's Exhibit 64. There is also a large amount of wainscoting and cove—12,887 square feet; is that correct?

A. That is wall tile.

X Q. 621. That is wall tile? Now, what do they use improvers and experienced helpers in that work for?

A. That would be similar to the other tile work.

1091 X Q. 622. Similar to the other tile work?

A. Yes, sir.

X Q. 623. I believe that you say you do recognize the custom of the trade—that it is the custom of the trade to employ the unit system; to work in groups on such work?

A. They ordinarily do work in groups, confined to such areas as the floor space will permit the work to be done.

X Q. 624. That is true of wainscoting and cove and ceramic tile and base and border tile?

A. That appears to be the custom.

X Q. 625. What is the name of the Reemployment officer at Roanoke; was it Mr. Winstead?

A. There was also a Mr. Roberts. We had a considerable number of Mr. Roberts involved on the project, on and off. Mr. A. L. Roberts; yes, sir.

X Q. 626. He was in charge of the Reemployment Office?

A. Yes; I understand he was the manager of it; he signed as manager.

X Q. 627. Mr. Dodd, it isn't customary, or is it customary to use common labor to run grinding machines for Terrazzo work?

A. I couldn't state that it is customary to use
1092 common labor. Now, up until and including the time that the Roanoke job was constructed, I had very little experience in Terrazzo work. In fact, a very small percentage of our work was Terrazzo, and prior to that, the Army used very little Terrazzo in the work that I had had experience in, but I had had considerable experience in the tile work you speak

of. I couldn't comment or pass any decision as to the customary method of placing and finishing Terrazzo work. This job was similar, and the Terrazzo work was a very small percentage of the work.

X Q. 628. You made reference in your testimony to some base and border work that was required to be relaid; was that a considerable amount?

A. I would say, for the amount that was involved in the job, yes, more than the customary amount.

X Q. 629. In what particular buildings were those?

A. Well, that was general. For instance, the lobby of the main building was relaid, as I recall, twice, and at the present it isn't what I consider a good job, as it stands.

X Q. 630. That is the particular job to which Mr. Wilson testified, and Mr. Godbey, too, that there was a difference of opinion as to the quality of that work, isn't it, dependent on how the light strikes that tile floor?

A. Well, that may be so, too, Mr. Doyle, but—

X Q. 631. I now ask you particularly about the tile base and border?

1093 A. Well, that would be the same principle.

X Q. 632. What building was that, then?

A. That was generally over the group of buildings.

X Q. 633. That is too general. Can you point to any particular substantial amount, other than this lobby?

A. I recall an instance in Building 7; yes.

X Q. 634. Whereabouts?

A. Now, the spot, Mr. Doyle, I wouldn't be able to recall.

X Q. 635. What character of work?

A. Base and border.

X Q. 636. How much?

A. I don't have the exact measurements in my possession.

X Q. 637. What particular time?

A. I don't know. I couldn't say 10 o'clock in the day, or 3 o'clock in the day.

X Q. 638. What month of the year?

A. I can't recall that.

X Q. 639. Was that September? That is the first building they were working on, now?

A. No; there was work removed and replaced in Building 7, I know.

X Q. 640. Isn't a fact, Mr. Dodd, that after Mr. Wilson discontinued the use of experienced helpers, some of those
1094 men qualified with the union and he reemployed them as skilled mechanics?

A. I couldn't substantiate your statement on that; no, sir.

X Q. 641. You don't recall two particular men, to whom Mr. Garlick gave names, one by the name of Marshall? You heard Mr. Garlick's testimony, didn't you?

A. Yes, sir.

X Q. 642. And Mr. Dogbey's?

A. Yes; as I stated before, I did.

X Q. 643. Do you recall that they testified that they did reemploy some of these experienced helpers as mechanics?

A. The exact testimony of Mr. Garlick and Mr. Godbey I can't recall at the present.

X Q. 644. You don't recall, then, whether or not this faulty work, tile work, to which you referred, was laid by those men, or not?

A. If I may be permitted to explain what I found—

X Q. 645. Yes?

A. In some cases, I will, if permissible—

X Q. 646. If you can point to the particular work and the particular building and not—

A. I will.

X Q. 647. Not testify generally. You understand what I am getting after?

1095 A. That is right. I think I can recall one building.

X Q. 648. You haven't answered my last question about Mr. Marshall being employed as a mechanic. Do you recall that?

A. I don't recall Mr. Marshall.

X Q. 649. Do you recall that Mr. Wilson was required to discharge 2 or 3 of those men, because they couldn't up production? They were semiskilled helpers?

A. I do recall several men, but—it come to my attention that several men that the Roanoke Marble & Granite Company did discharge, yes, but it didn't come to me that they wasn't up to production, in the manner that you have presented it; it was in a different manner.

X Q. 650. They were mechanics, were they?

A. They were mechanics. In fact, they entered a protest at the office at the time they were discharged. May I state—

X Q. 651. No, I don't think it is competent. We have had a lot of disgruntled employes on this job. There was offered in evidence a letter, Defendant's Exhibit EE, which pertains to some complaint about the tile base and border, the protection of the border across the door. How much did that amount to in labor expense?

A. I couldn't recall. That was quite numerous throughout the job at that time. That is only a reference to one instance,
1096 but as I recall it, I made—I didn't make any particular mention of one location or one instance, I don't think, in

my correspondence. As I recall it, it was more of a general nature. Am I right?

X Q. 652. You are right; it applied generally?

A. That is right.

X Q. 653. The quarry tile base and border and floors in the various buildings. How much would that amount to in dollars and cents, as you recollect it?

A. I think, Mr. Doyle, it would be—If I attempted to estimate it, I couldn't arrive at a reasonable figure.

X Q. 654. In other words, it was just general?

A. Yes, just a general condition throughout the job.

X Q. 655. Now, isn't it a fact that the only substantial amount of work that was required to be relaid was the tile work in the main building, to which you have previously testified?

A. No, sir; that was a comparatively small percentage of it.

X Q. 656. But you can't designate the particular tile work, what building and where it was?

A. I could go back over my records and locate it; yes.

X Q. 657. I say you can't do it now?

A. I can't without going and refreshing my memory of the records; no, sir.

X Q. 658. Now, you testified that, as to some—you
1097 testified as to the analysis you made of the plaintiff's claim in this case, that was filed with the Veterans' Administration. I show you Plaintiff's Exhibit No. 84, and ask you if this is the claim?

A. This appears to be a photostatic copy of it.

X Q. 659. This is a copy supplied us by your department, supplied on call?

A. Yes; this appears to be the photostatic copy from which I compiled my report.

X Q. 660. That is the one, is it?

A. Yes, sir.

X Q. 661. Now, I believe your testimony was that, in analyzing the difference between the estimated cost of mechanical labor, labor for mechanics, and the actual cost incurred upon mechanics, as appears in the figures in this claim, there was only something more than \$1,000 difference?

A. I haven't it right down here.

X Q. 662. Just generally?

A. \$1,700, something like that.

X Q. 663. Now, your first figure that you took, I believe, was \$7,078—pointing to this one page 3—as estimating the setting labor, 520½ days or 4,164 hours?

A. Mechanic hours; yes.

X Q. 664. Mechanic hours!

A. Yes.

1098 X Q. 665. At \$1.70 an hour; is that correct?

A. It appears to be.

X Q. 666. Is that the figure that you used?

A. As I recall it, I did.

X Q. 667. Now, underneath that, in parentheses, that labor is divided into mechanics at \$1.10, and semiskilled at 60 cents, is it not, that making up \$1.70; is that correct?

A. Yes, it totals that.

X Q. 668. That totals \$7,078?

A. Yes.

X Q. 669. In other words, there is included in that amount 4,164 hours at 60 cents an hour for semiskilled labor; is that right?

A. That is what it appears to be.

X Q. 670. That wouldn't be semiskilled—that wouldn't be skilled mechanic labor, would it, if you mean compared to the actual cost of the skilled mechanical labor?

A. Well, if you included as semiskilled, it wouldn't be, no.

X Q. 671. That is what I mean. Now, we turn over here to the actual labor on the job, page 7, and they actually used 8,054 mechanical hours of labor at \$1.10 an hour; is that the figure that you used?

A. I used this to compile mine from. I assume that I did.

I had no other figures to arrive at anything, other
1099 than what was there.

X Q. 672. And they used 110 hours of helper hours at 60 cents, plus grinding machine, 120 hours on the grinding machine—

A. What rate? 60 cents?

X Q. 673. It doesn't say the rate there?

A. That appears to be 60 cents, isn't it?

X Q. 674. That is 60 hours?

A. 120 hours. I do recall, in making up your report—I mean from memory—that you had listed and computed the amount between what you actually figured the Roanoke Marble & Granite Company actually figured the job to be, and the cost of it—they entered in the salary of their timekeeper as \$25 a week, and in reality you paid him \$20.

X Q. 675. We are not talking about that. We are talking about this here [indicating]. They employed actually 5,370 hours of mechanics and helpers at \$1.70, and that is \$9,129; is that correct? That is the figure you used?

A. That is the figure I used. I couldn't say that statement is correct.

X Q. 676. Now, you didn't take into consideration, therefore, the increased cost of common labor which goes in to make up this claim, did you?

A. I don't recall right now. We get a report—

X Q. 677. I call your attention to page 3 of the estimate, in which the subcontractor has figured the common labor, the
1100 bull gang, 1,000 hours at 45 cents, at \$450 total, plus the claim for foremen, 5 weeks, \$18; plus 6 men, 5 weeks, or 900 hours, at 45 cents an hour—

A. As I understand you to say—

X Q. 678. Total, 405?

A. A foreman at \$18 a week? Did I understand you to say that?

X Q. 679. I am reading right off of here [indicating]. You can read it, too?

A. I wasn't reading it, too.

X Q. 680. Now, the estimated common labor here isn't in excess of \$955; is that correct?

A. That appears to be, from the record.

X Q. 681. From this claim, analysis of this claim, it shows that he actually used the bull gang 1,500 hours, at 45 cents an hour, \$675; is that correct?

A. As it appears there, yes, sir.

X Q. 682. Now, he actually used—the actual labor cost, using common labor instead of semiskilled, a total of \$18,615; and he actually used labor hours, 18,249; is that correct?

A. Could we check, if you please, the number of semiskilled hours that he estimated to start with, and skilled hours?

X Q. 683. Yes; semiskilled hours, 1,000 plus 900; is that correct?

1101 A. I believe that is O. K. How about the skilled hours in there? What would the skilled hours be for the mechanics?

X Q. 684. The skilled hours up here [indicating]?

A. \$441.64 was estimated the skilled hours, and you actually used how many skilled hours?

X Q. 685. 8,054?

A. He replaced those—

X Q. 686. Just a minute. And he actually used 18,249 common labor hours?

A. I understand that; yes, sir.

X Q. 687. You didn't take that into consideration?

A. I further understand, if I may be permitted, that you substituted mechanics, hour for hour, with—

X Q. 688. Just a minute. Never mind what we did subsequently. You didn't take into consideration the increased cost of common labor in your analysis of this claim; is that correct?

A. I did.

X Q. 691. Mr. Dodd, you made reference to a Mr. Knox in your direct testimony. Do you know that he is a skilled mechanic?

A. Mr. Knox? I did not. I have no knowledge of his ability as a mechanic, whatsoever.

1102 X Q. 692. Was there any reason why, if he was a skilled mechanic, he should not have supervised the work for the subcontractor, in the absence of the foreman?

A. I see no reason; no.

X Q. 693. Let me ask you this: You have had considerable experience in supervising work in private construction—would it operate to increase the labor cost, to any great extent, for the subcontractor for tile and Terrazzo and marble work, if you were required to use common labor in place of improvers or semi-skilled labor?

A. Other than general observation on previous contracts, up to and including the time that I did considerable more than you had involved at Roanoke at what is known as Kecoughton, Virginia, where Mr. Wilson's men worked for me, his foreman and several other mechanics—I used what was ordinarily termed, 1 improper to a ratio of 4 to 5 mechanics.

X Q. 694. You are the Government inspector on that job?

A. I wasn't Government inspector, I was placing the work on a force account; what is known as purchase and hire, purchasing our own material and hiring our own labor. I wasn't inspector there. There was considerably more marble and tile work involved than at Roanoke.

1103 X Q. 695. Isn't it true that, in the ordinary performance of labor, you make more headway and faster progress and do better work by employing experienced men than you do common labor?

A. I wouldn't say an excess amount of it, because when you had more improvers than was necessary for the amount of mechanics, you have to put them to doing mechanics' work, which they ordinarily wouldn't perform satisfactorily, or have them do nothing.

X Q. 696. Well, now, let's assume that the mechanics were sufficiently skilled, so that they could use to advantage experienced

helpers in preference to common labor, wouldn't that increase the
1104 production of the work and lower the cost?

A. It would, if you permitted experienced helpers to perform duties as mechanics.

X Q. 697. No; I say performing the duties which you related in your testimony, getting the tile, soaking it and handing it to them, and mixing the mortar?

A. I used, in getting the tile in on my particular branch of work, purchase and hire—I used unskilled labor for carting the tile in and putting it in, not an improver, as you call him. I term him as a tile setter helper on the Civil Service pay roll.

X Q. 698. Do you use unskilled labor for selecting the tile to go in the proper place?

A. The tile was brought in in boxes, if it was wall tile. Maybe a dozen boxes would come into a room of wall tile and be packed into a metal drum and water poured over it that required no skill, and it was taken out at such time as the mechanic needed it and piled along the wall, and I used helpers for grouting and wiping the tile.

X Q. 699. Where is that project?

A. At Kecoughton, Virginia, the Veterans' Administration hospital at Kecoughton, Virginia.

X Q. 700. Where is that?

A. That is adjacent to—between Phoebus and Hampton.

X Q. 701. And you are the general contractor?

1105 A. There is no general contractor; no, sir. I was merely performing this purchase and hire work for the Veterans' Administration.

X Q. 702. You were the Government officer?

A. Yes, sir, but in many cases—

X Q. 703. Just a minute. Wasn't that a Government job?

A. That was a purchase and hire job.

X Q. 704. Mr. Dodd, in a contract which describes the minimum wages for skilled labor and unskilled labor, but which does not define the terms of skilled labor and unskilled labor, you determine that necessarily by the custom of the particular trade, don't you, as to what is skilled labor and unskilled labor?

A. I would term it as what is generally recognized, for example, by the Department of Labor, or the Associated General Contractors of America, or some standard basis on which to form your opinion of the duties of any particular skilled trade.

X Q. 705. You didn't make any inquiry of them as to the application of that to the carpenter work at Roanoke, did you?

1106 A. As to whether form building was skilled or unskilled? Is that what you refer to?

X Q. 706. Yes.

A. No.

Redirect examination by Mr. JULICHER:

R. D. Q. 707. Mr. Dodd, in the case of these apprentices and improvers—apprentices and improvers are the same, aren't they, except they apply to different trades?

A. I have yet been unable to determine any material difference between the two.

R. D. Q. 708. Well, strictly speaking, what is an apprentice?

A. An apprentice is one who is learning a trade.

R. D. Q. 709. That is, a learner, in other words?

A. That is right.

R. D. Q. 710. He is there for the sole purpose of learning a trade?

A. Well, I wouldn't say for the sole purpose. In most cases, he receives compensation for his services.

R. D. Q. 711. In most cases, he does, but does he all of the time?

A. That I am not able to state.

R. D. Q. 712. What I am getting at is: Is an apprentice 1107 in a different position that the ordinary helper or skilled mechanic?

A. In my past experience, he has been.

R. D. Q. 713. Mr. Dodd, can you tell me about how many subcontractors were on this job?

A. I can count them up in a short while. You mean on both the mechanical and general contracts?

R. D. Q. 714. No, the subcontractors under Blair on this job?

A. I couldn't state definitely.

R. D. Q. 715. About how many?

A. I would say at least 10 or 12.

R. D. Q. 716. Ten or twelve, of which the Roanoke Marble & Granite Company were one?

A. Yes, sir.

R. D. Q. 717. They were one of the subcontractors?

A. That is right.

R. D. Q. 718. Were you required to keep a daily log by Central Office?

A. Yes, sir.

R. D. Q. 719. The daily log was supposed to be kept and entries made every day as to the progress of the work?

A. That is correct; yes.

R. D. Q. 720. Can you state whether it is possible to 1108 mix concrete of a harsh mixture, without a great deal of honeycombing?

A. Let me get you right. It is possible; yes, sure.

R. D. Q. 721. You had examples of that on that job, too, didn't you?

A. We did; yes, sir.

R. D. Q. 722. Now, with these reinforcing steel workers, you stated before, on cross-examination, that they used plyers?

A. That is correct.

R. D. Q. 723. That is about all the tools they used?

A. In some instances, they would use cutters for cutting, if they have various dimensions.

R. D. Q. 724. For cutting the steel?

A. Yes; that is commonly not done on the job, but in some cases the lengths are not proper, or they may want to substitute a few pieces of steel from some other section of the building in that particular place, and they might cut it.

R. D. Q. 725. Let me ask you this: Isn't the placing of reinforcing steel a particularly technical job; doesn't he have to know just how to do it?

A. There is a considerable difference, for instance, if you go out to inspect on a building reinforcing rods placed by unskilled labor and a reinforcing rodman; yes, sir.

R. D. Q. 726. Now, let me ask you this, Mr. Dodd: Did you, at any time on this Roanoke job, come upon men who were
1109 performing skilled jobs, who were listed as laborers?

A. We did; yes, sir.

R. D. Q. 727. Have you any way of telling about how often?

A. That I couldn't recall, definitely.

R. D. Q. 728. More than one?

A. Yes, sir; that is in the correspondence.

R. D. Q. 729. Other than this man Moore that you cited before?

A. There are others in the correspondence; yes, sir. We had numerous complaints. In fact, the affidavits submitted to the Government office——

R. D. Q. 730. I am talking now about what you know, yourself, that you can say about, yourself?

A. Yes, sir.

R. D. Q. 731. You testified that you walked about this job——

A. At such times as I did, it was reported later on to the general contractor.

R. D. Q. 732. Now, tell me this: Was there an inspector from the W. P. A. or P. W. A. on that job?

A. The P. W. A., Public Works Administration.

R. D. Q. 733. On that job, inspecting the labor conditions?

A. Yes, sir.

R. D. Q. 734. Do you recall about when he was there?

A. It was sometime during the summer months, I believe.

1110-1111 R. D. Q. 735. July sometime?

A. In July, as I recall.

R. D. Q. 736. Does the name Rauber sound familiar to you?

A. Yes.

R. D. Q. 737. R-a-u-b-e-r?

A. Yes, sir.

R. D. Q. 738. Do you remember about how long, how much time he spent there?

A. I don't recall. 2 or 3 days. I don't recall exactly his arrival and departure, but some 2 or 3 days there.

R. D. Q. 739. Now, you testified that you have done some purchase and hire work for the Government?

A. A considerable amount; yes.

R. D. Q. 740. Did you have occasion to hire rodmen?

A. I did, sir; yes.

R. D. Q. 741. What were they, skilled or unskilled?

A. Yes, sir; particularly skilled.

R. D. Q. 742. Skilled workers?

A. In every instance, as far south as Gulfport, Mississippi.

A. R. BROWN, a witness produced on behalf of the defendant, testified as follows:

Q. 1. Will you give the reporter your name?

A. A. R. Brown.

Q. 2. Your address?

A. 1442 Iris Street, NW.

Q. 3. Your age, please?

A. Fifty-six.

1112 Q. 4. Where are you employed at the present time?

A. The Veterans' Administration.

Q. 5. How long have you been employed there?

A. I should say around 15 years.

Q. 6. What is your official position, please?

A. I am assistant to the Chief of the Structural Subdivision.

Q. 7. What do your duties include?

A. Mostly designing, supervision of designing of all hospital work under the Veterans' Administration; and I also have, in the past, done considerable field work, some superintendence of construction and investigation of special difficulties on things that happened in the field.

Q. 8. Would you briefly outline your qualifications for structural supervision?

A. Well, I am a graduate civil engineer and have been in the practice of that profession since 1905, since leaving school.

Mr. KILPATRICK. If the Commissioner please, we will concede his qualifications in construction supervision. We know Mr. Brown.

The COMMISSIONER. That will be sufficient.

By Mr. JULICHER:

Q. 9. Mr. Brown, did you have occasion to visit the Roanoke facility during the period of construction?

A. Yes, sir.

1113-1114 Q. 10. Do you recall just about what that date was?

A. The latter part of May, I think, in 1934.

Q. 11. The latter part of May?

A. Yes, sir.

Q. 12. Do you remember why you were sent to that station?

A. I was sent there specifically to inspect and report on certain concrete work.

Q. 13. Upon your arrival there, what did you find?

A. Well, I made a superficial inspection of certain portions of the principal building, No. 2.

Q. 14. The principal building, No. 2?

A. Yes.

Q. 15. Do you recall what that building was?

A. Well, it is one of the group of hospital buildings.

Q. 16. A hospital building?

A. Yes, sir.

Q. 17. And what did you find there? What, particularly, did you inspect, the concrete or what?

A. I inspected the concrete work; yes.

Q. 18. Did you find any defects in the concrete?

A. I found, in that particular building, a considerable amount of honeycomb concrete work.

Q. 19. You say "a considerable amount"; to what extent? Specifically, did it necessitate removal?

A. Yes, it did; in several instances, the removal of columns, beams and sections of floor slab.

Q. 20. And was it your job to ascertain the cause of this honeycombing?

A. It wasn't my duty, but from experience I could pretty
1115 well guess at the cause of those conditions.

Q. 21. Will you state now what you believe to be the cause of that honeycombing?

A. Well, it is a lack of attention in the placing of the concrete in the forms.

Q. 22. Did you see the forms where that existed?

A. I saw the forms on portions of the building; yes, sir.

Q. 23. And in what condition were those forms?

A. Well, from the work that I noticed, it gave indications of not being new material and was insufficiently braced and didn't have the appearance of being first-class workmanship in the way of form work.

Q. 24. Now, as to the extent of this honeycombing, can you state, or can you estimate about how much concrete had to be removed and repoured while you were there?

A. I should say there were probably half a dozen columns that were removed, and there were probably 100 to 200 square feet of beams and slabs removed—square feet, that is.

Q. 25. How were the footings?

A. The footings were all in place. I don't recall any investigation of the footings.

Q. 26. You didn't investigate the footings—

A. No, sir.

Q. 27. On any of the job?

A. No, sir.

Q. 28. This concrete that had to be removed—is it your opinion that it would cause the contractor any delay in the
1116 completion of his job?

A. Well, of course, it is a little hard to estimate the effect of work in particular section of the job, as affecting the entire job, but I think, undoubtedly, it slowed him down, in that he was required to perform this work, and the labor required was necessary to be taken in before proceeding with the construction.

Q. 29. Well, there can be no doubt but that it cost the contractor more money?

A. Oh, yes, sir.

Q. 30. He had to pay for those corrections?

A. Yes, sir; and that was real money in labor and material.

Q. 31. Were you only sent down there to investigate the concrete conditions in Building 2; that was your entire job?

A. As I recall, that was my specific instruction.

Q. 32. Do you know whether Captain Feltham had reported to Central Office about this concrete condition, that induced your being sent down there?

A. Well, I don't always see the correspondence that goes to the front office, and we get our orders from there to proceed, but undoubtedly I saw notes from Captain Feltham regarding this condition.

Q. 33. Now, from your experience, can you tell, from what you have been able to observe with reference to the concrete work, whether or not the concrete work was being carried on
1117 in an efficient and workmanlike manner?

A. At that particular stage of the game, of the work my impression was, that it wasn't being carried on efficiently or rather in a workmanlike manner.

Q. 34. What is your opinion based on? I am asking you for the period of time you were there, while you were there, just from what you saw, yourself?

A. Well, from visible inspection of the form work and concrete work in place, rather large areas of honeycombing, which were investigated by drilling into the concrete work to determine their depth, a considerable amount of chipping of the walls and beams, to bring the surface of the concrete back where the forms had given way, and had to be cut-back, so that new work could be installed against the face of the concrete.

Q. 35. What tests were made of the concrete; what is the procedure?

A. Well, you can look at it, and if it is shallow, of course it is more or less visible, but if there is any question about it, we take, say, a 1-inch air drill and just went right through, went right through the wall or column or beam, as the case might be, to find out whether—to look in the bore to see whether the concrete was solid, or not.

Q. 36. What was the procedure about testing of the concrete?

A. Well, our normal procedure is to take two tests from which a certain quantity of concrete, say around 50 1118 yards, and make your test of 7 days, one of 7 days and one of 28 days and the concrete tests that were sent to the laboratory were satisfactory, generally satisfactory.

Q. 37. Simply because these tests are satisfactory, that doesn't necessarily follow that the concrete that the contractor poured is satisfactory, does it?

A. No, sir; the material, itself, the mix, itself, might be satisfactory, but if it isn't properly placed in the work, of course it doesn't function, and that shows it doesn't have the strength.

Q. 38. If the test shows the mix is satisfactory—

A. How?

Q. 39. The tests that you made merely shows that the mix is satisfactory?

A. When it comes to the required strength.

Q. 40. When it comes to the required strength?

A. Yes, sir.

Q. 41. Does it show that the concrete as poured by the contractor is necessarily good concrete, or strong concrete?

A. It is strong when it is solid, but it is weak when it is honeycombed.

Mr. JULICHER. That is all.

Cross-examination by Mr. KILPATRICK:

X Q. 42. Mr. Brown, while you were there, you conferred with Mr. Roberts, did you, Mr. Blair's superintendent?

1119 A. I believe I talked with Mr. Roberts, but I think that most of my meetings were with Mr. Neal Andrews, I believe.

X Q. 43. Did he cooperate with you in trying to remedy this condition you found?

A. He did.

X Q. 44. And all of the defective work was properly replaced, was it?

A. As far as I know, while I was there.

X Q. 45. I mean while you were there, of course?

A. My time was short, and I might state how it should be accomplished as it would be carried on after I left.

X Q. 46. Did you tell us how long you were there?

A. I was there about 6 days. My total time was 6 days from Washington and back to Washington.

X Q. 47. You were on the job probably 4 days?

A. Yes.

X Q. 48. That was in May?

A. In the latter part of May; yes, sir.

1120. THOMAS G. DODD, a witness recalled on behalf of the defendant, was examined, and in answer to interrogatories, testified as follows:

By the COMMISSIONER:

R. D. Q. 743. You have been sworn?

A. Yes.

R. D. Q. 744. Give us your full name.

A. Thomas G. Dodd.

The COMMISSIONER. All right.

Mr. JULICHER. Do you want any of the other background? He has already given it.

The COMMISSIONER. If he has already given it, I do not need it given again.

Redirect-examination by Mr. JULICHER:

R. D. Q. 745. Mr. Dodd, after the Roanoke job was finished, did you have occasion to make a report on a claim filed by the Roanoke Marble & Granite Company?

A. Yes; I did.

R. D. Q. 746. Was that requested of you officially?

A. Yes, sir; from the head of our department, the Director of Construction.

R. D. Q. 747. You did make a report?

A. Yes.

R. D. Q. 748. I show you a document and ask what that is.

A. This is my report to the Director of Construction.

1121 R. D. Q. 749. Is that your signature at the end of the report?

A. Yes, sir; it is.

Mr. JULICHER. I offer this as Defendant's Exhibit HH. We are skipping FF and GG.

Mr. DOYLE. If Your Honor please, I have not had an opportunity to examine this. It appears to be a report made by this Government inspector on a claim which is substantially the same claim that the Roanoke Marble & Granite Company is making in this case.

The COMMISSIONER. If it is a report made by an agent of the Government and made in the line of his duty under the Act about three years ago, it becomes competent whether submitted by the Government or the plaintiff.

Mr. KILPATRICK. It appears to me that this report contains hearsay that might not be competent.

(Here followed discussion off the record.)

By Mr. JULICHER:

R. D. Q. 750. Mr. Dodd, from what source of information did you make this report?

A. From the records of the field office of the Roanoke supervising construction.

R. D. Q. 751. The job on which you were assistant superintendent?

A. Yes, sir.

R. D. Q. 752. You were there all during the job?

A. Yes.

1122 R. D. Q. 753. You know all these things you have reported of your own knowledge?

A. I do.

R. D. Q. 754. And this report was requested in the regular course of your duties?

A. It was requested in a letter from the Director of Construction.

By the COMMISSIONER:

R. D. Q. 755. Was it made by you in the regular course of your business?

A. Yes, sir; requested by my superior, the Director of Construction, to answer the claim they had submitted, for the Central Office of Information.

The COMMISSIONER. The reason I am disposed to admit it is that frequently the maker of the instrument is not present and not here to be cross-examined, but this gentleman is here subject to cross-examination. We have been admitting them in the last two or three years either for the Government or the plaintiff. The Government has objected strenuously in two cases I have had, but

if it is something made in the course of business by that person that he is ordinarily expected to make, it is competent evidence, not conclusive at all but it is competent even if he is not here to be cross-examined.

Mr. DOYLE. May I ask a few questions?

The COMMISSIONER. Yes.

1123 By Mr. DOYLE:

R. D. Q. 756. When was this report made?

A. May 14, 1935.

R. D. Q. 757. It is not dated here. How do you know that?

A. I have the cover letter on this. I was in Gulfport, Mississippi. I have the cover letter, the original is in the Central Office.

R. D. Q. 758. And the claim was submitted to you for this report?

A. Shortly after we completed Roanoke, I was in the Central Office—

R. D. Q. 759. By "Central Office," you mean what?

A. Veterans' Administration, Washington.

R. D. Q. 760. On a business trip?

A. Yes; Mr. Wilson and his attorney submitted the claim. I was in conference in Washington at that time. I had travel orders to proceed to Gulfport, Mississippi, and a few days thereafter they forwarded me this letter with your claim and requested that I make a report on the claim for the cover letter dated May 14, 1935.

R. D. Q. 761. And you prepared this report while you were in Gulfport?

A. I had the field records.

R. D. Q. 762. Answer my question. You prepared the report while you were in Gulfport?

A. Yes.

1124 R. D. Q. 763. What records did you have?

A. All necessary records from the Roanoke office and also the Reemployment Office.

R. D. Q. 763. What records were those?

A. Records in connection with your case, employment cards, employment records, daily logs, forwarded me at my request from Roanoke to Gulfport, Mississippi.

Mr. DOYLE. I think we will enter an objection on the grounds it is hearsay. The witness is not—this is not such a report as is contemplated by the provisions of the Act covering such actual acts, transactions, and events at the time of this construction contract but was a report made on a claim submitted to the Department after that time and not on orders covered by the Act.

The COMMISSIONER. Objection overruled, exception noted, and it will be marked "Defendant's Exhibit HH."

(Said report, consisting of 11 pages, so offered and received in evidence, was marked "Defendant's Ex. HH," and made a part of this record.)

Mr. DOYLE. May we please at this point specifically refer to the number of the claim, which is in evidence, I think it is Plaintiff's Exhibit No. 84, I think, is the claim to which this witness is testifying. Is that correct?

The WITNESS. I don't recall the claim number.

Mr. DOYLE. There is a claim in evidence as Plaintiff's Exhibit No. 84. I would like to have this witness identify this
1125 and see if it is the claim—

The COMMISSIONER. Is that the exhibit?

Mr. DOYLE. No, sir. I have a copy of it here.

By Mr. DOYLE:

R. D. Q. 764. Can you say whether that is the claim?

A. It has been quite a while ago; I couldn't go into—

Mr. JULICHER. If you can state.

A. (Continued.) I couldn't definitely state that it is.

Mr. JULICHER. That is all.

The COMMISSIONER. Any further questions of this witness?

Mr. DOYLE. Are you ready for cross-examination?

Mr. JULICHER. All ready.

Mr. DOYLE. If Your Honor please, I would like to cross-examine him pertaining to this report. I would first like to have an opportunity to examine him. We can recall him for cross-examination in a few minutes, if it will save time.

Mr. KILPATRICK. I have some questions.

The COMMISSIONER. All right.

Re-cross-examination by Mr. KILPATRICK:

R. D. Q. 765. Mr. Dodd, in your testimony here in October of last year, you referred to a number of things contained in your daily log on the job and testified about the nature of that log, which was introduced into evidence as Defendant's Exhibit A, is that right?

1126 A. As I recall it.

R. D. Q. 766. In that daily log there appears on, I think, every day, practically every day in there, a statement of the temperature of that date?

A. I think so; yes.

R. D. Q. 767. Could you tell is how and when those temperature readings were taken?

A. A thermometer was located on the door of the office, the field office, and the temperature was taken daily by one of the field clerks.

R. D. Q. 768. What time of day was it taken?

A. The hour is indicated. Sometimes eight o'clock; it was taken at different intervals, morning, noon and evening or afternoon. I don't recall.

R. D. Q. 769. I think if you will examine the log, you will see there is only one reading.

A. I don't know what is in here. That is our instruction.

R. D. Q. 770. There is no way to tell from that log what hour of the day that temperature was taken, is there?

A. Not from the log; no, sir.

By the COMMISSIONER:

R. D. Q. 771. Do you have any recollection if you only took it once a day?

A. The field office has a weather bureau record from the Weather Bureau daily. That was forwarded from the 1127 Weather Weather Bureau to the office.

By Mr. KILPATRICK:

R. D. Q. 772. The Weather Bureau in Roanoke?

A. Yes; forwarded us daily.

R. D. Q. 773. Which of your answers is correct, that it represents a reading on the door or the Weather Bureau?

A. This evidently is the thermometer on the job site.

R. D. Q. 774. Inside the office or outside?

A. Outside.

By the COMMISSIONER:

R. D. Q. 775. Who did take that?

A. One of the clerks in the field office.

R. D. Q. 776. One of the two?

A. Yes.

R. D. Q. 777. What are their names?

A. Mrs. Adams and Miss Raven were the two clerks.

R. D. Q. 778. Who directed either of them or both of them to take the reading?

A. I don't know whether Captain Feltham or I.

R. X Q. 779. If it was you, wouldn't you know whether you took it at the beginning of the day, the middle of the day, or the end of the work?

A. Our regular procedure, I think, has been established by the Veterans Administration three times a day but at this time it was once a day.

1128 R. X Q. 780. We are trying to find out when that once was.

A. That I would have to get from one of the field clerks, at eight, twelve, or four, between eight and four in the afternoon, which were our office hours.

The COMMISSIONER. Ordinarily, up here there is a difference between eight and four in the afternoon, quite a few degrees.

By Mr. KILPATRICK:

R. X Q. 781. In order to determine the maximum and minimum temperature, you would have to have weather bureau records?

A. You would, yes.

R. X Q. 782. Would it be approximately the same at the reservation as at the Weather Bureau Station?

A. That I am not in a position to state.

R. X Q. 783. You have no opinion?

A. I may have an opinion.

R. X Q. 784. Do you mind giving us your opinion?

A. In the City of Roanoke, I imagine the temperature would be higher than it would out on the surrounding hill.

R. X Q. 785. Mr. Dodd, I ask you to refresh your recollection, page 1109 of the record, where I asked cross-question 704, and the answer you gave to that.

A. Yes, sir.

R. X Q. 786. You recall that testimony?

A. Yes.

R. X Q. 787. This is the organization you referred to, the Associated General Contractors of America, isn't it? Are 1129 you familiar with that document?

A. I am not; no sir.

Mr. KILPATRICK. If Your Honor please, I would like to offer in evidence a publication by this organization, which Mr. Dodd has said is an authority on the meaning of skilled and unskilled labor, as Plaintiff's Exhibit No. 107.

(Here followed discussion off the record.)

Mr. KILPATRICK. Plaintiff's Exhibits Nos. 103 and 104 should be changed to Nos. 105 and 106, respectively, so this will be No. 107.

Mr. JULICHER. If Your Honor please, I object to the introduction of this exhibit into evidence because it was copy written in 1935, as is shown on the document itself, which is after the contract period in this case, and I do not see that it is material in any way to this case for that reason.

The COMMISSIONER. Well, I can well conceive where one might be closer, but it goes to the weight rather than to the competency.

Mr. KILPATRICK. We are supplementing Mr. Dodd's testimony. He says this organization is an authority on skilled and unskilled labor. If you object on the ground that we have not proved that they published, I shall have to bring in that testimony.

Mr. JULICHER. I do not object on that ground. I object on the ground it was published in 1935, which was after the contract

period in this case and in no way establishing construction occupations at the time of this contract.

Mr. KILPATRICK. It is stated to be a codification in effect of existing classifications in the construction trade and is gotten out just for this purpose of determining what is a skilled mechanic and what is unskilled labor and intermediate worker, the very issues we have here since this witness stated this organization is an authority on the subject, the Court is entitled to know what—

The COMMISSIONER. The objection is overruled and exception noted, and it will be marked "Plaintiff's Exhibit No. 107."

(Here followed discussion off the record.)

(Said booklet entitled "Construction Occupations" so offered and received in evidence, was marked "Plaintiff's Exhibit No. 107.")

The COMMISSIONER. Any further cross examination?

Mr. KILPATRICK. Yes, Your Honor.

By Mr. KILPATRICK:

R. X Q. 788. Mr. Dodd, will you look at your log there on February 3, 1934?

A. Yes.

R. X Q. 789. The last entry of that report says, "Made up first pay roll for Blair," doesn't it?

A. Yes.

R. X Q. 790. Does that mean that your office made up Mr. Blair's pay roll?

A. No.

R. X Q. 791. Does that mean that was the first pay roll Mr. Blair had?

A. It appears it was.

R. X Q. 792. Don't you know he had pay rolls before that time?

1131 A. He may have had pay rolls. This appears to be the first pay roll you submitted to our office for checking. We checked those pay rolls usually within the following week after they were paid.

R. X Q. 793. That entry means you checked the first pay roll of Blair and not that you made it up?

A. It appears to be. I did not enter this particular entry into this daily log.

R. X Q. 794. You did not enter that?

A. No.

R. X Q. 795. How do you know? Is there anything there to show who made the entry?

A. No. Some days Captain Feltham would give the information for compiling the daily log and some days I would. We kept no record as to the days each gave the information.

R. X Q. 796. In fact, there is nothing on any page to indicate who made the entries on that log, is there?

A. No, sir.

R. X Q. 797. I ask you to turn to the entry of May 7—

The COMMISSIONER. The same year?

R. X Q. 797. (Continued.) 1934, with reference to Building No. 15. Your log states "No work account of shortage of form lumber." Is that what it states?

A. That is what it states.

1132 R. X Q. 798. Does that mean that work on that building was being delayed because no form lumber was available?

A. That is what it indicates.

R. X Q. 799. That means forms for concrete were needed and no further work could be done until those forms could be secured, is that it?

A. It would require forms if you expect to pour concrete, yes.

R. X Q. 800. I should think we would all agree on that, Mr. Dodd. Just answer the question.

A. That is correct. It could not be poured.

R. X Q. 801. I call your attention to Defendant's Exhibit O and that particular photograph in there of Building No. 15 as of April 30, 1934.

A. When was this notation here?

R. X Q. 802. You might check that before you look at the photograph. You see the photograph of Building No. 15 as of April 30, which I showed you, do you not?

A. I see it. Building 15.

R. X Q. 803. That is Building No. 15 as of April 30, isn't it?

A. Yes; that is what it is dated; yes, sir.

R. X Q. 804. That is Defendant's Exhibit. I assume it is what it purports to be. Look at that photograph.

A. This is April 30.

1133 Mr. JULICHER. This is May 7.

By Mr. KILPATRICK:

R. X Q. 805. Mr. Dodd, let me direct your attention to this photograph. Those men are pouring the roof slab, are they not?

A. That is the roof slab and storeroom. It appears they are pouring on this date.

R. X Q. 806. What forms remain to be built after you pour the roof slab on that building?

A. The only thing you would have would be steps. That is the only thing I can see that would be required for this.

R. X Q. 807. Is that building there in shape to build steps?

A. Yes. Oh, yes. The indications are they should be poured with this platform.

R. X Q. 808. Then if there were not sufficient lumber to build the steps, would that hold up all work on that building at that stage?

A. No; not all work, no.

R. X Q. 809. Your entry on May 15, "No work on Building 15 because of shortage of form lumber," does not indicate that there was no work that could be done, does it?

A. Possibly there could have been some work of some description done there. That does not mean all branches of work would have been eliminated at this time.

1134 R. X Q. 810. I ask you to look at the photograph of Building No. 16 as of April 30. This is part of the same exhibit. There were a good many of these photographs in Exhibit O. This is the photograph I had in mind. As of that date the roof slab on No. 16 had been poured and the forms had been removed from around the sides of the building, had they not?

A. Not the entire building. There are forms indicated yet on the footings of the walls where the brickwork started.

R. X Q. 811. Were there any other forms to be built on that building?

A. That question I couldn't answer definitely unless I had the drawings before me.

R. X Q. 812. You cannot tell from looking at that photograph?

A. No. I don't recall what was required in connection with this building. That has been some time ago. I couldn't tell except by the drawings.

R. X Q. 813. The forms we are speaking of now are forms for holding concrete to be poured.

A. I understand that.

By the COMMISSIONER:

R. X Q. 814. You cannot tell by looking at that to see whether it needed any more forms for concrete?

1135 A. No. I would have to look at the drawings, not from this view of it. I couldn't make a definite answer from this view of it.

By Mr. KILPATRICK:

R. X Q. 815. Mr. Dodd, your entry in your log of May 7 as to Building No. 16 says, "No work—no lumber." Is there anything in that photograph to indicate that a shortage of lumber would have stopped work on the building?

A. It would. You couldn't start your brickwork here. I don't see any lumber.

R. X Q. 816. Was there something to be formed?

A. Something to be formed—

R. X Q. 817. The forming then was not held up because there was no lumber if the forms were already in place?

A. It appears to require some on the inside. I don't see any on the inside. Do you see any on the inside?

R. X Q. 818. Did you intend by this entry on the log to indicate that all work was being held up on that building at that date because there was no lumber available?

A. Not all the work. The log didn't state all the work was held up. It shows no work. It didn't state all work was held up.

R. X Q. 819. Then by "No work—no lumber" you mean that no work was done on that building that day and that there was no lumber available for use on that date? Is that what you meant?

1136 A. That is the way it appears.

R. X Q. 820. But you do not necessarily mean that that lack of lumber was the reason no work was done?

A. That would stop the brickwork going forward. Other branches, mechanical trades, could perform certain work in that building.

R. X Q. 821. Will you look at your log of August 2, 1934? What is said in there with reference to the roof on Building No. 2 being delayed? Well, it reads, "Roof on Building No. 2 being delayed on account of no framing timber on ground for the past eight days." That is correct, is it? That is what appears in the log?

A. Yes.

R. X Q. 822. Does that mean the framing was held up eight days because no framing lumber was available?

A. That is what it would indicate.

R. X Q. 823. Then it would indicate that no framing had been done for eight days?

A. That is what the log would indicate. It was made daily at the job.

R. X Q. 824. I call attention to the progress photograph on Building No. 2 on July 31, 1934.

A. Well, it appears that you only have a small portion. This log could be correct. That is only a small portion of this framing.

1137 R. X Q. 825. What are the men on the roof doing?

A. Framing, but you have only a small portion there. The log could be correct.

R. X Q. 826. Look at the log on July 31 and see what it indicates about the work on No. 2 on that day. What is said about the work on No. 2. It reads, "Masons laying exterior walls

between first and second floors." It says nothing about the framing work going on, does it?

A. It would not necessarily. In compiling the log, it would not have been necessary to have mentioned it. As I recall it, in making these logs at such time as a contractor was out of lumber or framing, it was ordinarily noted in the beginning.

R. X Q. 827. In these remarks in your daily report such as that you have just reported for Building No. 2, you do not necessarily state the full work was going on on that building at that date?

A. Not necessarily. If it is on the building from the time it started until it was completed—if you go back eight days prior to this, I don't know whether it shows you are out of lumber.

R. X Q. 828. I think if you will go back through the past eight days you will find no entry showing you were doing any framing on that roof, and I think you will find that statement of no framing lumber available is the only one.

1138 Here is a photograph showing men doing framing work on it, but the log does not mention it. I am not criticizing the log. I want to find out if it is not true that you do not necessarily tell everything that is being done on your daily log.

A. Yes; in making up the log, it could have been missed.

R. X Q. 829. You do try then to set out all work that is being done?

A. Of any importance. That is required by our Washington office.

By the COMMISSIONER:

R. X Q. 830. I would like to get some light there. You say "of any importance." Do I understand your daily log covers every bit of work done in the building?

A. Well, this could have been possible. In instances when we made the inspections over the entire job, we may go along by this particular building at ten o'clock in the morning with a notebook in my pocket. I note that they are laying brick and nobody on the roof. The framing is shifted from building to building continually, and it may have come over at eleven o'clock and this picture made at two.

R. X Q. 831. It is more than a detail of any one day. I had assumed that no person in your position making a
1139 log tried daily to cover every bit of work in the buildings.

A. It is possible but not practical on small items. The method of establishing things in compiling the logs, ordinarily Captain Feltham or myself always kept a notebook in our pockets. In some instances he would start one way and I would go the other, maybe in the morning or afternoon, and would put down just what was going on at such times as we made the notations.

R. X Q. 832. There are two lines of events, one in the line of ordinary completion of the building and the other out of line of ordinary completion. Did you note them both?

A. If they were actually in progress those particular days, we did, but we had no set hour during the day at which time we taken those notations.

By Mr. JULICHER:

R. X Q. 833. How many buildings were there on this job?

A. I couldn't recall that.

R. X Q. 834. Were there fourteen?

A. I don't recall; some fourteen or fifteen. There must have been fifteen.

By Mr. KILPATRICK:

R. X Q. 835. Mr. Dodd, when you have a log entry on Building No. 15, no framing lumber, you might have meant you passed there about eleven o'clock and there was no lumber. It would not indicate they did not have some there in the 1140 afternoon?

A. It could have been possible just like this. I could have passed that particular building at ten o'clock in the day. The footings were poured and ready for columns and no columns on the job, column forms. Naturally I would note that there was no lumber there. You might come in the next day or that afternoon and start the columns.

R. X Q. 836. Then over this long period that you or Captain Feltham testified about last fall from the log on work on Buildings Nos. 5 and 6, that there was no work done there because there was no forming lumber, that doesn't mean that there was no work done on those dates that you state there was no form lumber?

A. The information in connection with the progress of the job—the superintendent contacted the contractor, and many times asked us on the progress; on those particular buildings, on those two particular buildings, No. 5 and No. 6, as I recall, the footings were poured there on one day and stood several days without any other forms being raised on the building. That is as I recall it.

R. X Q. 837. Then if you could pass by the building and see they were not building forms—you could tell that just by going by and looking at the buildings, couldn't you?

A. I could; yes.

R. X Q. 838. Were the forms built right at the building?

1141 A. For Buildings 5 and 6, which you just referred to, they were directly in front of our field office.

R. X Q. 839. So your observation would be made at this central plant where they build the forms as to the form lumber?

A. Yes; and our office was adjacent to the two building sites.

R. X Q. 840. For example, here on May 18, where you report the number of Mr. Blair's workmen at work—let us take the brickmasons, seven at work—how did you ascertain that he had only seven brickmasons at work?

A. That was furnished daily by the contractor's field office to us.

R. X Q. 841. If the daily log that Mr. Roberts kept, our general superintendent, and sent into Mr. Blair's headquarters, Exhibits No. 11 and 11-A, indicated thirteen masons actually at work and paid for work that day, that log would be wrong?

A. If it was, it would be Mr. Roberts' office's error. It was furnished by him to our office daily.

R. X Q. 842. Mr. Dodd, can you tell us how many feet, board measure, of lumber is necessary to build a square foot of plain forms?

A. What is that?

R. X Q. 843. How many feet, board measure, of lumber is 1142 required to build a square foot of plain forms?

A. Including braces, et cetera?

R. X Q. 844. Yes.

A. It largely depends on the type of construction, wall, floor, or what. You would have to give me something to at least work on. There are several different types of forming. Some forming requires heavier bracing than others.

R. X Q. 845. How many times can the lumber be used in the forms for columns and be reused?

A. It depends on the care taken with forms in removing them.

R. X Q. 846. When your log reports a shortage of form lumber what information is that based upon?

A. Based upon the contractor's superintendent. At such time as we visited the site of the building and there wasn't any construction or forming going on during the course of the day, we would inquire of the superintendent or possibly one of the assistants as to why there wasn't any forming going on on that particular building.

R. X Q. 847. You kept a pretty accurate record of materials, didn't you?

A. I would say we attempted to. I would not say absolutely accurate. We did not propose to keep track of every foot of lumber, for instance. If we were informed a carload of 1143 lumber had come in, that went into the log. I didn't go over and check to see how many feet of lumber there were.

R. X Q. 848. You did not attempt to keep a definite record in your log of all materials and supplies received by the Blair organization?

A. We endeavored to keep such items as a car of lumber and cars of brick. I didn't put in two kegs of nails. On a project of that size we did not attempt to enter everything. We did enter in the daily log materials having a bearing on the progress of the job.

R. X Q. 849. You would not have overlooked a carload of lumber in your daily log, would you? That would be a sizable object.

A. If the contractor did not report to us—he was requested to report to us the delivery of the lumber. The siding of the site was between the hospital and the site. I didn't go down and inspect this lumber.

R. X Q. 850. You relied on the contracting superintendent to give you this information, is that right?

A. That is right.

R. X Q. 850. Which work is done first at a building site—the trench excavation and pouring of the footings—is the trench excavation first or the footings?

A. For pipe tunnels—are you speaking of?

R. X Q. 852. Yes.

1144 A. What trench excavation?

R. X Q. 853. For the foundation.

A. For the column footings?

R. X Q. 854. What about the foundation walls? Do you trench for those before you pour the footings ordinarily?

A. Exterior walls or interior footings?

R. X Q. 854. Exterior foundation walls?

A. This particular construction was the curtain wall type. You excavate for your footings, and it was possible to excavate for curtain walls although the curtain walls did not go to the depth of the footings. They could have been excavated before the footings were poured. That appears to be a matter of whichever the contractor elects to do.

R. X Q. 855. Did you try to keep a record of materials received by the Redmond Heating Company?

A. As I recall, I used the same system with Redmond as I did with the Blair organization.

R. X Q. 856. Redmond's superintendent arrived there on March 19, I believe, did he not?

A. I don't recall the exact date. It possibly appears in the log.

R. X Q. 857. Suppose we look at March 19.

1145 A. Redmond's force at this particular time was not checked by me. It was another Government representative.

R. X Q. 859. Who was that?

A. Mr. Johnson at this time was checking the mechanical reports.

R. X Q. 860. Where is Mr. Johnson now?

A. The Washington office here.

R. X Q. 861. Of the Veterans' Administration?

A. Yes.

R. X Q. 862. He had to do primarily with the inspection of Redmond's work, did he not?

A. At this particular time; yes, sir.

R. X Q. 863. Look at March 28, as you go along, almost every day, and see if there is any report on Redmond's force, as you go along?

A. March 28, it would appear on the log, is the first entry of Redmond Heating Company's force.

R. X Q. 864. What was the size of Redmond's force at that time?

A. The log states one superintendent, one plumber, one electrician, one steam fitter.

R. X Q. 865. What was the total number of Blair's employees at work on the same day?

A. Well, you have at work on that date, 168.

1146 By the COMMISSIONER:

R. X Q. 866. What was that date?

A. March 28.

By Mr. KILPATRICK:

R. X Q. 867. The log of March 29 indicates that Redmond had not received any materials up to that time, does it not?

A. That is right.

R. X Q. 868. Should he have received any?

A. That I couldn't state.

R. X Q. 869. What would be the purpose of commenting on the fact that he had not received any?

A. Well, it would indicate there had not been any material delivered on the project. That would be the only purpose.

By the COMMISSIONER:

R. X Q. 870. If there had been no material delivered to him, in your judgment, was that delaying the completion of this project?

A. To answer that I would have to go back over the progress figures.

R. X Q. 871. I don't think you would. If you do not care to answer it, all right.

A. What progress had been made on the buildings at that time in this particular work? I have seen the concrete structural work go up and then the sleeves placed. It does indicate over on May 17 the placing of sleeves in the concrete. It would not have been absolutely essential at that time unless the building was up considerably in structure that they had to place their sleeves.

R. X Q. 872. I am not trying to get absolutely and essential. What I want to know is whether, you being there, was that delaying the progress.

A. In that particular building, I cannot recall.

By Mr. KILPATRICK:

R. X Q. 873. Look at February 15 in your log. I see an entry there, "800 yards dirt removed as of this date." Does that mean that 800 yards were removed on that date or only a total of 800 yards removed up to that date?

A. It appears to be 800 yards removed as of this date.

R. X Q. 874. I still do not know whether it means on that date or up to that date.

A. It says as of that date.

By the COMMISSIONER:

R. X Q. 875. Your construction is that on that particular date 800 yards would be removed?

A. That is my interpretation of the log, that is what it would be.

R. X Q. 876. I might say there are numerous entries in the log showing the number of yards removed as of that date.
1148 That is your interpretation. Your construction is that that would mean the number of yards removed on that date?

A. On this particular item, I would interpret it that way.

R. X Q. 877. Interior partitions which contain conduits running through them cannot be built, the walls of the interior partitions, until the pipes have been tested, can they?

A. No; it is not good construction practice to do that.

R. X Q. 878. And these concealed pipes must be covered before the partition walls are built, mustn't they?

A. That is right; certain pipes, not all of them.

R. X Q. 879. Heating pipes, for examples?

A. Heating pipes; yes.

R. X Q. 880. Those pipes were installed by the mechanical equipment contract on this particular job, were they not?

A. Yes.

R. X Q. 881. Then wherever it appears that the mechanical equipment contractor is engaged in covering pipes or you are testing pipes in an interior partition, it is quite obvious that the

interior partition itself cannot be built prior to the date that the testing is going on or the covering is going on, isn't it?

1149 A. It ordinarily would indicate that. I have often seen partitions erected in cases where they were set back from the pipe, and exterior walls, where most of the heating is involved were in recesses, exterior wall recesses, and the backing up of this wall was done at the time the exterior face was made. It would not be involved in the partitions. The major portion of this is in the exterior walls.

Mr. KILPATRICK. I move to strike all of this.

The WITNESS. You asked me if it would delay this erection of partitions. It would on interior partitions; but on exterior walls, where the major portion of this was involved, it would not delay it.

Mr. KILPATRICK. I withdraw the motion.

By Mr. KILPATRICK:

R. X Q. 882. At the October hearing you testified, Mr. Dodd, that you had never made any sworn or written statement that Mr. Blair had violated his contract by contracting on the labor only on the masonry job, didn't you?

A. I think I did, if I recall.

R. X Q. 883. You had never made any such statement to the effect that Blair had been forced to remove about thirty thousand dollars' worth of defective concrete?

A. I don't recall any such statement, either written or verbal.

1150 R. X Q. 884. And you stated that you never had put any monetary value on the concrete you had ordered removed; is that right?

A. As I recall it.

R. X Q. 885. Did you make verbal statements to an agent from P. W. A. covering those matters you just said you did not make affidavit on?

A. I don't recall any statement to P. W. A. to that effect. The Public Works Administration sent an investigator down there to make an investigation. We made the records available, and we were questioned on different items, but I cannot recall making any such statement.

R. X Q. 886. That agent's name was Rauber?

A. As I recall it.

R. X Q. 887. I call your attention to Defendant's Exhibit HH, which you have just identified as your report. On page three you have a paragraph in which you say: "Your attention is invited to the investigation made by the Public Works Administration Investigator from Washington, D. C., Mr. Rauber, in connection with labor violation of Algernon Blair under contract VAc-424. It is suggested that a copy of his report be obtained

from the Public Works Administration." Have you examined that report recently?

A. I have not.

Mr. KILPATRICK. Are you going to offer that report in 1151 evidence?

Mr. JULICHER. No. That would be covered by the stipulation.

Mr. KILPATRICK. That is true.

By Mr. KILPATRICK:

R. X Q. 888. Mr. Dodd, did you state to Mr. Rauber at the time of his investigation that you had found it necessary to order Blair to remove the brickwork that had been erected to the height of about one floor on one of the buildings?

A. I cannot recall. It has been five years since that investigation.

R. X Q. 889. Do you recall ordering the removal of brickwork to that extent?

A. I don't recall at this time. I have erected several jobs since then. It would be rather difficult to carry each building in my mind at all times.

R. X Q. 890. Do you recall whether you stated to him that the removal of this brickwork would cost the contractor about six thousand dollars?

A. I couldn't recall any of the conversation at this particular time of the investigation of Mr. Rauber.

R. X Q. 891. Would you say now that you ordered removal of the brickwork on the Roanoke job to the extent that it would cost Algernon Blair six thousand dollars?

A. That I couldn't state.

1152 R. X Q. 892. Could you state whether you had ordered the removal of reinforced concrete work to the extent of thirty thousand dollars' worth?

A. I couldn't recall any concrete of that amount involving that much money. It could be possible that I would not recall it.

R. X Q. 893. Have you any idea at all of the value of the reinforced concrete you did require him to remove and replace?

A. Not at this time. I would have to go back over the record and check what was removed.

R. X Q. 894. In ordering the removal of concrete, do you recall the use of air compressors and air hammers for that work?

A. I do; yes, sir; Building No. 1.

R. X Q. 895. Did you tell Mr. Rauber that in order to remove this Mr. Blair had to use four air compressors, with four air hammers attached to each compressor, working 24 hours a day for over nine days?

A. I don't remember discussing that particular item with Mr. Rauber, but I do recall working nights and Sunday. I was living on the ground.

R. X Q. 896. Could you tell us how many air compressors and air hammers were used?

A. I don't know how many.

1153 R. X Q. 897. How many air compressors were on the job?

A. That I can't recall. I don't know how many there were.

R. X Q. 898. And you do not know how many hammers?

A. It is possible to put several hammers on one compressor, depending on the size of the compressor.

The COMMISSIONER. We generally take a recess in the middle of these morning and afternoon sessions. We will take a five-minute recess now.

(Thereupon, a five-minute recess was taken.)

The COMMISSIONER. You may proceed.

Mr. KILPATRICK. If Your Honor pleases, I believe Mr. Doyle has some questions to ask this witness.

The COMMISSIONER. All right.

By Mr. DOYLE:

R. X Q. 899. Mr. Dodd, will you kindly refer to Defendant's Exhibit A, the log you introduced?

A. What date?

R. X Q. 900. About August 24, in your log, 1934.

A. All right.

R. X Q. 901. I note that you have listed at work and on the pay roll one tile setter on that date; is that correct?

A. That is what the daily log states; yes.

R. X Q. 902. And it does not show any improvers or helpers, tile setter helpers, does it?

1154 A. It doesn't indicate here; it doesn't indicate any helpers being carried on the entire project as of that date, August 24.

R. X Q. 903. You have two columns here, one listed "At Work" and the other, "On the pay roll."

A. That is correct.

R. X Q. 904. And there were none at work and none on the pay roll on that date?

A. It shows tile setter, one at work and one on the pay roll that was not at work. This does not indicate that two tile setters were at work on this particular date. We have one column—the hours—this being a P. W. A. project—the hours were limited to so many a week, and in order to work the number of hours, the contractor elected to work broken shifts. In other

words, men come in on certain days and work eight hours a day and then go off, and then this column would come in.

R. X Q. 905. So this first column listing indicates 534 were actually working on the job?

A. That is right. These were carried on the pay roll not at work.

R. X Q. 906. By "these," you mean in the column headed "On the pay roll" and totaling 1,008?

A. That is what he was carrying on the pay roll as of that date.

1155 R. X Q. 907. Where in that schedule would you carry the common laborers of the Roanoke Marble and Granite Company that were either at work or on the pay roll?

A. The common laborers ordinarily are set up with the branch under which they are, as labor foreman, Virginia Engineering.

R. X Q. 908. You are referring to Virginia Engineering now?

A. I don't see the heading of your contract under labor.

R. X Q. 909. So far as this shows, we did not have any common laborers at work or on the pay roll?

A. From this log. However, there was a couple or three days there was work—

R. X Q. 910. I am speaking about August 24 on this log. Now turn to August 25. There are no common laborers, helpers, or improvers shown at work or on the pay roll for the Roanoke Marble and Granite Company. Is that correct?

A. That is correct.

R. X Q. 911. August 27, the same?

A. From this log; yes.

R. X Q. 912. August 28, the same situation?

A. That is correct.

R. X Q. 913. Nothing shown for the Roanoke Marble and Granite Company as improvers or helpers or common laborers?

1156 A. Not under the heading of the Roanoke Marble and Granite Company. However, they could be distributed in here. I couldn't definitely state.

R. X Q. 914. Could have been distributed where?

A. Could have been distributed under the general contractor's column here if they were on the job.

R. X Q. 915. Yet you have the Virginia Engineering Company's force set out separately?

A. Yes; that is right. That is a much larger force than you would ordinarily have carried.

R. X Q. 916. Now also on August 29, you still show one tile setter at work and one on the pay roll?

A. That is correct.

R. X Q. 917. Turning to Thursday, August 30, you show three tile setters at work and three on the pay roll?

A. That is correct.

R. X Q. 918. You do not show any improvers or tile setters' helpers?

A. Not on this log; no. I think the pay roll would indicate a little more clearer in that instance, copies of the pay roll, than this would.

R. X Q. 919. Isn't that information taken from the pay roll there in that second column?

A. Not from the pay roll; no.

R. X Q. 920. What is the reference?

A. The number of men is furnished our office by 1157 the general contractor.

R. X Q. 921. At work, total 556?

A. That is correct.

R. X Q. 922. What is this second column taken from, headed, "On pay roll?"

A. In other words, when the general contractor submitted a sheet daily, it showed how many men were actually at work that day; taking this from the pay rolls you would arrive at that.

R. X Q. 923. Who does this taking from the pay rolls?

A. The clerks.

R. X Q. 924. Which clerks?

A. The clerks of the field office of the Veterans' Administration.

R. X Q. 925. Your clerks. Then that column on that particular log was taken from pay rolls, wasn't it?

A. Taken from the daily sheets. This information was submitted by the general contractor.

R. X Q. 926. I am talking about this column here, headed, "On pay roll," which totals for August 30, 1,021. Which pay rolls was that taken from?

A. Possibly taken from the pay rolls or furnished by the contractor.

R. X Q. 927. You made up this log or supervised the making of it?

1158 A. Not in every instance. Others supervised it.

R. X Q. 928. It was made in your office under your supervision, wasn't it?

A. Not necessarily. I was not in charge of the proposition. Another man was in charge of it. There were days I was on leave, a day or two at a time, and here and there on the job. I did not prepare it all.

R. X Q. 929. Obviously it was made from pay rolls. From what copies and whose pay rolls was it made?

f.

A. You said it was obviously made from pay rolls. It couldn't have been made from other than the contractor's or subcontractor's pay roll on that date.

R. X Q. 930. And yet on this date it does not show any common laborers?

A. Had you submitted any pay roll?

R. X Q. 931. It doesn't show any improvers or common laborers or tile setters' helpers?

A. Not under the heading as such, no.

R. X Q. 932. Under any heading does it show anywhere?

A. I don't see it.

By the COMMISSIONER:

R. X Q. 933. In your judgment, why doesn't it show any?

A. At this particular time that it appears, as I recall, the Roanoke Marble and Granite Company started men on the 1159 project and was required to employ through the Federal Employment Agency, they were working open shop, mechanics and laborers, and if they were working union mechanics, they were to employ through the Local Union business agent. At the time, as I recall now, at the time the Roanoke Marble and Granite Company started the project, there were some three or four days' period there I didn't have time to check their men and when I eventually got through checking it, I found that neither the mechanics nor the unskilled laborers had either been employed through the Federal Reemployment Agency or the Local Union Business Agent. The general contractor was directed to discontinue the employment of these men in view of the fact they had not been employed in compliance with the contract requirements.

By Mr. DOYLE:

R. X Q. 934. And the subcontractor did that?

A. As I recall, they did.

R. X Q. 935. And had them comply?

A. As I recall, they did.

R. X Q. 936. And promptly?

A. I wouldn't say promptly.

R. X Q. 937. You did not make any further objection?

A. I don't recall any.

R. X Q. 938. You heard Captain Feltham's testimony in this case, did you not?

1160 A. Yes, sir.

R. X Q. 939. You heard him testify with reference to this particular log, this exhibit, didn't you?

A. I think I did; partly.

R. X Q. 940. Do you recall that he says in reply to a direct question by Government counsel, "This is our daily log, a record of everything that transpired in connection with this contract, Blair contract, during the period of construction?"

A. I don't recall him making a particular statement of everything.

R. X Q. 941. Well, is that a fact?

A. No, sir; it is not a fact. It is not a daily log of everything; no, sir.

R. X Q. 942. Well now, for instance, tell us what might be omitted from this daily log in reference particularly to the employment of labor?

A. The only items that we would make in the log, ordinarily, would be—

R. X Q. 943. I am asking what might be omitted from the log with reference to daily labor or either on the pay roll.

The COMMISSIONER. Maybe he was going to answer it.

A. Ordinarily, we would enter on this daily log in reference to labor, such items as are pertinent to the construction and
1161 the progress and any difficulties which may arise or disputes that may arise in the progress of the job. It is not a question of what we may omit; it is a question of what we include.

By Mr. DOYLE:

R. X Q. 944. Now, I notice at the foot of each page here, each daily page, you do make a brief statement, a short statement with reference to work that is being carried on in each building. Is that correct?

A. Yes, sir; it is so stated.

R. X Q. 945. And turning to the log at the date of August 24, there is a statement under Building 7 that there is "laying up interior tile partitions." That was not done by the Roanoke Marble and Granite Company, was it?

A. No, sir; that was hollow tile partitions.

R. X Q. 946. But it goes on to say in the same building, "Setting quarry tile base."

A. That could be possible.

R. X Q. 947. That is what you mean by describing the work carried on in this log?

A. Yes, sir.

R. X Q. 948. Are there any other memoranda or reports you make in connection with the daily work that is not incorporated in this log?

A. Make to whom?

1162 R. X Q. 949. To your superior officer, the central office, or anybody, as a matter of custom.

A. As a matter of custom required in the way of reports, these daily logs and monthly progress reports, monthly and semi-monthly. As I recall at this particular date, that is what was required, daily, semimonthly and monthly progress.

R. X Q. 950. How about special reports?

A. They would not be included in this daily log.

R. X Q. 951. No reference made to them?

A. No, sir.

R. X Q. 952. You, of course, would include in the daily log any reference to faulty work or repair work that was required to be relaid?

A. Not necessarily. If it was corrected in due time, a reasonable time, it would not necessarily be included in the daily log; no.

R. X Q. 953. Well, any extensive work would be included in the daily log, wouldn't it?

A. If this be the case, we would have a considerably larger daily log than what we have.

R. X Q. 954. If you had any extensive repair work or resetting of tile work on account of faulty construction, wouldn't it be included in the daily log?

A. Not necessarily; no, sir.

R. X Q. 955. Well, I thought that you testified—Cap-1163 tain Feltham testified that this covered everything.

A. As I recall, our procedure at this particular time, at such time as a piece of work was condemned or rejected, the contractor was given a reasonable time to correct it, and if it was not corrected in a reasonable time, then he was notified by letter, noted on the daily log, that it should be removed and replaced and he had so many hours to remove and replace it.

R. X Q. 956. Your log does show on each particular page what particular men were employed on that date, doesn't it?

A. A brief statement.

R. X Q. 957. It doesn't show whether it was original construction or relaying or resetting?

A. No.

R. X Q. 958. It just has reference to the particular buildings?

A. That is correct.

R. X Q. 959. If there was anything out of the ordinary, would a reference be made in this log?

A. Unless it was rejected and not removed and replaced within the required time of the contract specifications, then we would notify the contractor in a general form, which would be a separate file and be carried under the heading of that particular branch of the work, and carried in that file, but would not go in the daily log.

1164 R. X Q. 960. Now, I believe you testified on your direct examination, in answer to a question by counsel, that the subcontractor did use intermediate grade of labor, semiskilled labor, in operating terrazzo grinders.

A. As I recall it, from the pay roll, yes, sir. I think the pay roll will bear that out. The certified pay roll submitted by the contractor to the Veterans' Administration will bear out the fact that they were paid sixty cents an hour, semiskilled, as I recall you termed it.

R. X Q. 961. That is information that you got from the pay roll?

A. From the pay rolls, that is correct.

R. X Q. 962. Now, do you know, as a matter of fact, those men were apprentices, improvers, or helpers, or whether they were common laborers?

A. That I cannot state. I never questioned the men as to their past experience while grinding the terrazzo.

R. X Q. 963. You merely make this statement from the information you gained from the pay rolls?

A. That is correct; otherwise, when you submit a pay roll for a man grinding terrazzo and you classify him as a terrazzo grinder at sixty cents an hour, that is the most authentic information that is available to us.

R. X Q. 964. The question of what determines his classification as an improver is the amount you paid him or his
1165 classification in that type of work?

A. I would say it would be determined by the class of work in which he was employed.

Mr. JULICHER. Isn't there some limit on the repetition of cross-examination and questions directed on cross-examination? This was all covered before. This witness has been cross-examined along this line thoroughly before. The only thing I offered this morning was this additional report.

Mr. DOYLE. If counsel has read this report, you will see all this is referred to.

Mr. JULICHER. It is all repetition.

The COMMISSIONER. Let's proceed with the cross-examination; we will get through quicker.

By Mr. DOYLE:

R. X Q. 965. With reference to this particular report, Defendant's Exhibit HH, that you identified and which was offered in evidence this morning, which purports to be a detailed report by you in connection with the subcontractor's claim, the Roanoke Marble and Granite Company, which claim, for your information, was offered in evidence by the plaintiff, and we will refer to it as Plaintiff's Exhibit 84. Now, with reference to that report, I notice that you made under oath?

A. It wasn't required.

1166 R. X Q. 966. It was not required?

A. No.

R. X Q. 967. You merely signed it?

A. That is correct.

R. X Q. 968. Have you had occasion to read it and examine it carefully since your testimony in this case?

A. I haven't; not and compared it with my original notes which were made.

R. X Q. 969. Are you willing now to subscribe to everything that is contained in this report as a fact to the best of your knowledge and belief under oath?

Mr. JULICHER. I object to that question, Your Honor. I hardly feel—

The COMMISSIONER. Your question with that qualification does not add anything. He is under oath to start with. The question is: Do you still believe in the truthfulness of your report?

The WITNESS. To the best of my knowledge. Before I would be willing to go under oath, I would have to compare my report with the claim which I can identify as being the one I made the report on.

By the COMMISSIONER:

R. X Q. 970. Was that report of the nature you had to swear to before you filed it?

A. No, sir.

1167 By Mr. DOYLE:

R. X Q. 971. But you do believe that the statements contained herein are correct?

A. From the records of the office.

R. X Q. 972. From your recollection now, not having examined it, as I understand from your testimony?

A. May I have the question?

R. X Q. 973. You believe the statements correct?

A. Why, yes; I would not have submitted it at the time. I do or else I would not have submitted it.

R. X Q. 974. Now, you said in this report that at no time—"the writer has at no time given verbally or by letter any such ruling as alleged by the Roanoke Marble and Granite Company." Now, didn't you testify that you did make a ruling with reference to this use of semiskilled labor by the subcontractor?

A. I don't recall at this particular time as to whether I testified I made a ruling as to semiskilled labor or not; that I couldn't say.

R. X Q. 975. Didn't you say that you testified that they could not use semiskilled labor to perform mechanics' work?

A. I don't remember whether I testified to that or not. However, if the occasion arose on the project that they attempted to use semiskilled labor for mechanics' work, the general contractor would have been notified, not the subcontractor.

1168 R. X Q. 976. Then you did make such a ruling as to the use of semiskilled labor?

A. I don't recall any such ruling.

By the COMMISSIONER:

R. X Q. 977. If that occasion had arisen—

A. I would have made a decision.

By Mr. DOYLE:

R. X Q. 978. You made reference in this report to the Virginia State Employment Service, and I believe you testified here this morning that when you entered upon the job, you found that the Roanoke Marble and Granite Company were employing some laborers and some mechanics who had not registered with the Virginia Reemployment Service?

A. That is correct, or the Local Union agent.

R. X Q. 979. And you called that to their attention?

A. I think there is a letter in the file to the general contractor to that effect, advising him that the condition did exist and it would be necessary to discontinue the employment of such men as constituted your entire force that did not comply with the contract requirements.

R. X Q. 980. And the subcontractor complied with that ruling, did it not?

A. As well as I recall; otherwise, there would be further correspondence.

1169 R. X Q. 981. In that connection, did you have any conference or conversation with Mr. Wilson about the matter?

A. I don't recall any conference. Mr. Wilson might have happened in the office or I met him on the lot and it may have been mentioned. However, I don't recall of any conference being held with Mr. Wilson relative to it.

R. X Q. 982. Did you discuss the matter with Mr. Wilson?

A. I don't recall any discussion. There are letters in the record to show that in letter form a notification was given him and conditions that existed. Those are in our files. The Veterans' Administration file will substantiate that.

R. X Q. 983. I don't recall that any such letter has been introduced in evidence. Is that a fact?

A. I don't know as to that. I have seen them in the file. I dictated the particular letter where the case came up that you employed—

R. X Q. 984. A letter to the central office?

A. To the contractor, Algernon Blair, notifying him of the condition.

R. X Q. 985. And that was corrected, I understand?

A. I assume that was.

R. X Q. 986. Was there anything out of the ordinary about that?

A. Yes, it was.

R. X Q. 987. What was that?

A. It is plainly set forth in the contract. At the time I checked it you hadn't one man employed in accordance with it.

1170 R. X Q. 988. That was August 30 or August 24?

A. Somewhere around there.

R. X Q. 989. You knew the subcontractor, the Roanoke Marble and Granite Company, was a local concern, did you not?

A. I didn't investigate them. I knew they had an office in Roanoke. I don't know when I was on the job that I had seen any representative of the Roanoke Marble and Granite Company. I can't recall seeing any of their representatives.

R. X Q. 990. Did you know much about them before you saw them on this job?

A. No, I had no occasion to know anything of their work or of the concern.

R. X Q. 991. Now, in this report, on page four, you state that on August 30, 1934, you accompanied Captain Feltham and found the Roanoke Marble and Granite Company was using what it termed as "improvers" of the tile work, doing skilled mechanics' work, using approximately one skilled mechanic and five improvers. Now we just reviewed this log, and we saw no improvers listed in the log on August 30. Is that correct?

A. That is right. The first pay roll had not been submitted at that time for it. We didn't know until they were checked. Over this period you were questioning me this morning about, you had submitted no pay roll over this period.

R. X Q. 992. Will you turn to your log on August 30 and tell us what they were engaged on? What work? What building?

A. Tile setters, three on the pay roll and three at work.

R. X Q. 993. No improvers at all?

1171 A. It doesn't show any improvers.

R. X Q. 994. What were they engaged in? What buildings were they working on?

A. It doesn't indicate as to what particular building they were working in or on the project. It indicates three on the project as of this date; it doesn't indicate what building, that they laying tile, terrazzo or what.

R. X Q. 995. It doesn't look like they were setting any tile according to your log, does it?

A. Possibly they weren't; only making preparation for laying.

R. X Q. 996. Look at your log again and see if it doesn't say under Building 7, "setting interior tile base and border"?

A. That is what it indicates here.

R. X Q. 997. In this report, in this same paragraph on page four, to which you make your reference to them on August 30, you state this, as a conclusion of your own, I assume: "the Roanoke Marble & Granite Company was endeavoring to evade the wage scale set forth in the P. W. A. form contract." What did you mean by that?

A. That was my personal opinion, in view of the fact that you were endeavoring to work a larger ratio of improvers, as you term them, in lieu of mechanics. In other words, the improvers received some sixty cents an hour and the mechanics \$1.10; therefore, four to five improvers to one mechanic—that is my personal opinion. I don't know of any other purpose it would serve.

1172 R. X Q. 998. Of course, at that time you did not have the pay roll. Where did you get the information?

A. I think it was established from men on the job.

R. X Q. 999. What do you mean, established from men on the job?

A. As I recall, three days or four days, some several days elapsed between the time the Roanoke Marble and Granite Company actually started on the project and such time as we were able to get around to them to check the branch of the work.

R. X Q. 1000. You are familiar with this type of work? You have inspected work of this type and you had charge of this work at Phoebus?

A. I did.

R. X Q. 1001. Just for the purpose of the record and for the Commissioner to understand, isn't it a fact that when you put your men in on a job of this kind prepared to set tile, it is necessary to unload your tile from the railroad train and distribute it throughout the buildings and the places where the tile setters are about to set it, is that correct?

A. Yes, sir.

R. X Q. 1002. What kind of labor do you use for that purpose?

A. That would be ordinarily unskilled labor.

R. X Q. 1003. Common labor?

A. Unskilled.

R. X Q. 1004. At forty-five cents an hour?

A. Whatever the scale may be.

1173 R. X Q. 1005. Now, I believe you heard Mr. Wilson's testimony in this case at Roanoke?

A. That is correct.

R. X Q. 1006. And he referred to that common labor as the bull gang, didn't he?

A. I don't recall the bull gang.

R. X Q. 1007. After you get the tile in place, ready to set, is there any other preparation that has to be made before the mechanic places it in place?

A. Well, the tile ordinarily—it depends on the type of tile. Ceramic tile is required to be soaked.

R. X Q. 1008. What about quarry tile?

A. Quarry tile, why in some instances some contractors will soak it. All ceramic tile, wall tile, is usually soaked.

R. X Q. 1009. You have to also get your sand and cement in place ready to mix your mortar?

A. You would; yes.

R. X Q. 1010. And you have to mix the mortar reasonably close to where you lay your tile, don't you?

A. I have seen it mixed both ways, inside and outside, and carted into the tooms.

R. X Q. 1011. If you use this particular type of cement for the joints, plaster or cement, that has to be mixed, doesn't it?

A. Sure; it has to be mixed.

R. X Q. 1012. What kind of labor do you use for that?

A. In my work I have always used what is known as a helper, which I understand the Roanoke Marble and Granite
1174 Company term as improvers. We don't have any.

R. X Q. 1013. Is that intermediate labor?

A. Intermediate grade.

R. X Q. 1014. Called semiskilled labor or experienced helpers?

A. Helpers.

R. X Q. 1015. We are in agreement on that?

A. Yes.

R. X Q. 1016. When you arrived on the job on August 30, how far had this work we have referred to progressed, the tile work?

A. What do you mean by stating when I arrived on the job? I had been on the job quite a while.

R. X Q. 1017. According to your report, you say on August 30 the writer accompanied Captain Feltham and found that the Roanoke Marble and Granite Company was using improvers. I take it you made a personal inspection of this work with Captain Feltham?

A. That is the intention.

R. X Q. 1018. That is what you say in this report?

A. Yes.

R. X Q. 1019. Now, how far had this work progressed?

A. That I couldn't say exactly. I wouldn't be able to say how much you had placed, what amount, what description of tile you had.

R. X Q. 1020. Could you recall whether or not they had distributed a lot of tile around various buildings or one building?

A. I couldn't recall.

1175 R. X Q. 1021. According to your log, there was only one building they were working with, Building No. 7. Is that correct?

A. At this particular date, it shows they were only working on one building.

R. X Q. 1022. I am talking about August 30.

A. Yes.

R. X Q. 1023. Called the "Colored Patients' Building," is that correct?

A. That I cannot recall.

R. X Q. 1024. You do not remember what building No. 7 was?

A. No, I don't attempt to carry that.

R. X Q. 1025. On page five of this report—just a minute. Who is Mr. C. W. Roberts?

A. Contractor superintendent of Algernon Blair.

R. X Q. 1026. He was on the job?

A. Yes, sir.

R. X Q. 1027. Did you at any time have any conference or conversation with Mr. Roberts regarding the discontinuing of semiskilled or intermediate labor on tile setters?

A. I don't recall of any conversation. However, I do recall a conversation—

R. X Q. 1028. You do not recall any conversation with Mr. Roberts about that matter?

A. Relative to the discontinuing of semiskilled improvers?

R. X Q. 1029. Yes.

A. I cannot recall at this time, no.

1176 R. X Q. 1030. You say in this report here, on page five, that your office, "The Office of the Supervising Superintendent of Construction does not indicate whereby Algernon Blair, general contractor, at any time protested by letter form or verbally any ruling in connection with the tile laying under his contract."

If such protest was filed by the Roanoke Company to the general contractor, it did not reach the Office of the Supervising Superintendent of Construction?

A. No.

R. X Q. 1031. Do you have any knowledge of any protest that the Roanoke Company made through Algernon Blair regarding the ruling you made?

A. No knowledge. If it was made at the contractor's office, it was never made to our office. We are not permitted to deal with a subcontractor in the execution of a contract.

R. X Q. 1032. But, of course, you did know about a protest that Mr. Wilson made to Blair?

A. I just stated that if he did, I knew nothing of it.

R. X Q. 1033. You knew nothing of it?

A. If made in the contracting office, the contractor never made any to our office, which was the proper procedure under the terms of the contract.

R. X Q. 1034. Now, Mr. Wilson and Mr. Roberts never went to your office and discussed that matter with you?

A. Not with me. They may have gone to the office. The office was open.

R. X Q. 1035. You had an office there?

1177 A. I was in the office.

R. X Q. 1036. You know Mr. Goodbey?

A. Yes.

R. X Q. 1037. He worked for you?

A. He was working on this Roanoke job for C. B. Wilson, and he worked directly on the Government pay roll at Kecoughtan. I was hiring on that job.

R. X Q. 1038. He was foreman for this work for the Roanoke Marble and Granite Company?

A. That is what he was listed as.

R. X Q. 1039. What was he doing?

A. My version of it, I was unable to determine who was foreman. Mr. Knox, who was carried as timekeeper, appeared to be superintendent of the job. However, he was not listed as that; he was listed as timekeeper.

By the COMMISSIONER:

R. X Q. 1040. You didn't find out who was first lieutenant and who was second?

A. That is correct.

By Mr. DOYLE:

R. X Q. 1041. You say Mr. Knox was timekeeper?

A. That is what he was listed as on the pay roll.

R. X Q. 1042. What did he do on the job?

A. He appeared to be everything except timekeeper, checking material and ordering men here and there as I passed through the Building. From all indications——

R. X Q. 1043. Would there be any objection——

1178 The COMMISSIONER. Just a minute. Let him finish his answer.

A. (Continued, Mr. Godbey was only foreman from the pay roll in name only, from my observation in being around the job.

By Mr. DOYLE:

R. X Q. 1044. You would have no objection to whether Knox was the gang foreman or Godbey, would you?

A. As long as you complied with the pay rate requirements, we weren't concerned.

R. X Q. 1045. What does that mean, complied with the pay rate?

A. The foreman could not receive less than the men, as I recall it. They couldn't receive less than the skilled, I think they had it. It has been established by the Public Works Department, the P. W. A., that the foreman could not receive less than employees under their supervision; which would be reasonable to assume.

R. X Q. 1046. What do you mean by that?

A. If you had a foreman on the job, he couldn't be put on the job as timekeeper at \$15.00 a week simply because there was no stipulated timekeeper.

R. X Q. 1047. Was Knox setting at all?

A. Sure.

R. X Q. 1048. Knox was setting there?

A. No. Godbey was on the tile division and Mr. Knox, in my opinion, was supervising.

R. X Q. 1049. Did you have any talk with Mr. Wilson about that?

1179 A. I had no occasion. He was not actively engaged in setting tile; otherwise, it would be \$1.10 an hour.

R. X Q. 1050. You mean Mr. Knox was not engaged in setting tile?

A. No, sir.

R. X Q. 1051. Well, you make a statement in this report on page nine, that Knox acted as general superintendent.

A. That was my observation, being on the project.

R. X Q. 1052. What was he doing in that capacity?

A. Directing men; employees, workmen, and what not. He went from room to room supervising the placing of material in different sections of the building and what would ordinarily be done by a foreman.

R. X Q. 1053. Of course, you would know whether or not he was a skilled mechanic, wouldn't you?

A. I had no reason to investigate. He wasn't acting as a mechanic. You had him on a weekly basis.

R. X Q. 1054. Did any labor union make any complaint to you about the matter?

A. That I don't recall. They may have or may not. I don't recall any.

R. X Q. 1055. On page ten of this report you make the statement that in some instances the work, speaking of the work of the Roanoke Marble and Granite Company, was removed and replaced as many as three times before it complied with contract requirements.

A. That is correct.

R. X Q. 1056. Do you recall whether any particular work was removed three times?

1180 A. The lobby of the main building, Building No. 1, quarry tile.

R. X Q. 1057. Building No. 1 or 2?

A. No. 2, the main medical building, lobby floor.

R. X Q. 1058. That was the tile that you condemned for certain reasons, you or Captain Feltham condemned, and they replaced it and relaid it? How many times did they replace it?

A. It was originally condemned by Captain Feltham. Portions of it were removed and replaced, and the second time, as I recall it, I condemned it. They replaced it and—

R. X Q. 1059. Portions of it?

The COMMISSIONER. Let him finish his answer. He was right in the middle of a sentence.

The WITNESS. They removed and replaced it, and at that time there was certain tile in the floor not entirely satisfactory in the floor. I thought it was going to mar the floor. I had them remove and replace it.

By Mr. DOYLE:

R. X Q. 1060. You do not mean that the whole lobby floor had to be removed and replaced three times?

A. As I recall it, all of it was removed and replaced, and the second time, as I recall it, approximately eighty percent was removed and replaced.

R. X Q. 1061. Are you sure about that?

A. I am not positive of it, as stated before. As I recall, being on this particular subject, the area was approximately eighty percent.

1181 R. X Q. 1062. I wish you would examine your log during lunch recess and be prepared to state when we reconvene from your log—

A. The amount that was replaced?

R. X Q. 1063. The particular days on which that was done.

A. I can't recall.

R. X Q. 1064. Have you got any records at all on that?

A. No; I don't think it is included in the daily log. The only thing that would be included would be if you failed to remove and replace it, the contractor would be notified in writing.

R. X Q. 1065. There would be a statement in that log as to what men were employed and in what building, and if they were working in Building 2, wouldn't that be in that log?

A. May be and may not. The date that that quarry tile in Building No. 2, the main medical building, was actually condemned and removed, I am not positive whether the log states or not.

R. X Q. 1066. You are not sure now whether it was replaced and relaid, are you?

A. Oh, yes.

By the COMMISSIONER:

R. X Q. 1067. You have been looking at that log, do you see it?

A. As I recall, it may have been in the month of November. A considerable amount of stuff was removed and replaced and it would be rather difficult to say when it was replaced or rejected. (Here followed discussion off the record.)

The COMMISSIONER. We will adjourn until two o'clock.
1182 (Thereupon, the hearing was recessed until 2:00 o'clock p. m.)

AFTERNOON SESSION

The COMMISSIONER. All right, gentlemen, let's get started.

Mr. DOYLE. All right.

Mr. JULICHER. Mr. Doyle, that report is here. I have the original report right here, and it is attached to Dodd's report, the original report submitted of the Roanoke Marble and Granite Company.

Mr. DOYLE. That is in evidence?

Mr. JULICHER. No; that is not in evidence. The one that is in evidence is one put in by you. We cannot use that because it belongs to the General Accounting Office.

Mr. COMMISSIONER, I have here the report, the original report as made by Mr. Dodd with the covering letters that are not present in Defendant's Exhibit HH offered this morning. Would it be permissible to have a photostat made of the original, including the cover letters, and substituted for the report?

The COMMISSIONER. Yes, sir.

Mr. JULICHER. This includes the cover letter by Thomas G. Dodd, and letter of transmittal of Captain Feltham, transmitting this report, the original report signed by Mr. Dodd and the exhibits which he uses to refer to his report. That is the complete report.

(Here followed discussion off the record.)

Mr. JULICHER. Then I have made the offer to substitute the complete report for the report offered this morning and 1183 marked Defendant's Exhibit HH.

The COMMISSIONER. Are you going to withdraw Exhibit HH and substitute this?

Mr. JULICHER. As soon as I have it photostated.

The COMMISSIONER. You are now offering it?

Mr. JULICHER. I am now offering it.

The COMMISSIONER. It will be admitted and marked Defendant's Exhibit HH, and it will be understood as soon as it is photostated that the photostat will be substituted for the original.

Mr. DOYLE. And subject to counsel's objection to the original offer.

The COMMISSIONER. Certainly.

Mr. DOYLE. Same ruling and same exception.

THOMAS G. DODD resumed the witness stand and testified as follows:

Re-cross-examination (resumed) by Mr. DOYLE:

R. X Q. 1068. Mr. Dodd, referring to your report, Defendant's Exhibit HH, and particularly to page 7—

A. Yes, sir.

R. X Q. 1069. You state at the top of the page there that claimant's original estimate which it set up for skilled mechanics was \$7,078.80 for setting labor whereas it actually expended \$8,859.40. Will you please turn to plaintiff's claim and tell us where you got those figures?

1184 A. Under that page you have for setting labor.

R. X Q. 1070. What page of the claim?

A. Three. \$7,078.80.

R. X Q. 1071. For setting labor?

A. 520½ days, 4,164 hours, at \$1.70 per hour, total, \$7,078.80.

R. X Q. 1072. And underneath in parenthesis it reads, "mechanics, \$1.10 and semiskilled, 60 cents"?

A. As I taken it from your claim, it included, as you stated here, your setting labor plus his overhead or whatever he includes in it. That is where I arrived at that item.

R. X Q. 1073. It says nothing about overhead. How is the \$1.70 made up?

A. That is not stated.

R. X Q. 1074. What does this read under \$1.70.

A. "Mechanics, \$1.10; semiskilled 60 cents."

R. X Q. 1075. How much does \$1.10 and 60 cents make?

A. \$1.70.

R. X Q. 1076. This is \$1.70 right there?

A. Yes.

R. X Q. 1077. That is a total of 520½ days or 4,164 hours, \$7,078.80. Now how much in the estimate there does the subcontractor estimate common labor?

A. It appears from what you state there that you estimated—

R. X Q. 1078. Common labor?

A. Forty cents is what appears to be there.

1185 R. X Q. 1079. Forty-five cents?

A. Forty-five cents. You have bull gang there, 1000 hours.

R. X Q. 1080. \$450.00?

A. That is right.

R. X Q. 1081. Down below there is another estimate of 45 cents, labor for cleaning?

A. Timekeeper, material man, at \$20.00 a week.

R. X Q. 1082. How much common labor on there?

A. \$405.00; total estimate of labor cost.

R. X Q. 1083. That makes a total of \$950.00 common labor at 45 cents?

Mr. JULICHER. This doesn't seem to be getting us anywhere. Counsel is having the witness testify what is found in his claim. I don't think the Government's witness is qualified to state what is meant by those things.

The COMMISSIONER. It is cross-examination on his report.

Mr. JULICHER. That is not on his report; it is on the plaintiff's claim he is attempting to report.

The COMMISSIONER. That is suggested because of some consideration of the report, wasn't it?

Mr. DOYLE. Yes, sir; the same subject matter.

By Mr. DOYLE:

R. X Q. 1084. Turning back to page 7 of your report, you state, "There is a difference of \$1,780 between its original estimate and its actual expenditure of this item."

A. That is correct; that is what I stated.

R. X Q. 1085. Where did you get the actual estimate of this item?

1186 A. From that seven thousand and some dollars in the original estimate and turning to the actual expenditure.

R. X Q. 1086. Turning to the actual expenditure, where did you get \$8,859.00?

That is the difference you claim you spent over your original estimate.

R. X Q. 1087. You got that out of page seven of the claim, did you not?

A. I cannot tell you that. I am not exactly familiar with your system.

R. X Q. 1088. My dear Mr. Dodd, this is your report.

A. That is correct. You have mechanics' hours 8,054 at \$1.10, or \$8,859.40.

R. X Q. 1089. On that same schedule how much actually did you spend for common labor?

A. You don't have the estimate set out like expenses. That phase of it is somewhat misleading. Let's go back to expenses and get to the mechanics' hours, which is more leading.

R. X Q. 1090. Turning to the same schedule?

A. Common labor hours.

R. X Q. 1091. How much?

A. 18,249½ hours at 45 cents.

R. X Q. 1092. What is the full amount?

A. \$8,812.27.

R. X Q. 1093. \$8,212.27, isn't it?

A. \$8,212.27.

R. X Q. 1094. Now, going back to your report, page 7—

1187 A. All right, sir.

R. X Q. 1095. In your criticism of the claim at the top of the page, and your estimate of the difference between the original estimate and the actual expenditure, did you or did you not take into consideration the increased cost of common labor?

A. No. I was merely, in this particular instance, was endeavoring to bring out the facts that you had the difference of original estimate as he had it set up there. You state you had semiskilled labor included, but over in your original estimate you say, "setting labor, 520½ days." It goes back over on this estimate, coming over to actual expenditures and says, "mechanic hours." I don't know what you mean. I take it for mechanic hours.

R. X Q. 1096. You did not take into consideration the additional cost of common labor in your statement, in your report, of the difference between estimated and actual expenditures, did you?

A. I did not attempt to bring that out. I tried to show that you only spent a difference of \$1,780.00 between your original estimate for skilled mechanics.

R. X Q. 1097. Skilled mechanics and semiskilled?

A. You did not state so in your breakdown. You set it up so many hours in your estimate and breakdown in your expenditures.

R. X Q. 1098. Semiskilled is included in the estimate. What is that \$1.70?

1188 A. A lot of items enter into that 520½ days, 4,164 hours, at \$1.70.

R. X Q. 1099. Underneath in parenthesis, what does that read?

A. "Mechanics, \$1.10; semiskilled 60 cents." Do you make indications that you had included semiskilled labor there? Did you?

R. X Q. 1100. You are the witness. Did you take that into consideration?

A. No.

R. X Q. 1101. You took into consideration the mechanics at \$1.10?

A. Just as you had.

R. X Q. 1102. You did not take into consideration the semiskilled?

A. In view of the fact you didn't take into consideration the semiskilled in the seven thousand there in the front, why should I?

R. X Q. 1103. Did you or did you not take into consideration the semiskilled and common labor?

A. I took it in as skilled labor, just as you had it here.

R. X Q. 1104. In your report you make no reference to the increased cost of common labor, do you?

A. No; I wasn't intended to.

R. X Q. 1105. If you will turn to page eight of your report, top of the page, you make the statement, "You will also note that Claimant has estimated 7,078 hours in its original estimate"—the fourth line down.

1189 A. "You will also note that Claimant has estimated 7,078 hours in its original estimate, which makes a difference of 1,708 hours"——.

R. X Q. 1106. "That it claims the job could have been done less than its original estimate"—where did you get the figure "7,078 hours"? That is in the estimate in the claim. It is, I take it, the same figure taken out of the estimate or claim?

A. Yes.

R. X Q. 1107. On page three of the claim there is a figure of \$7,078.00. Is that an error?

A. I would have to go through the entire thing and take considerable time, to be able to check item by item in here before I could answer that.

R. X Q. 1108. You see on page three \$7,078.00 and you refer in your report to 7,078 hours.

A. Possibly an error in typing it.

R. X Q. 1109. Possibly an error in your report?

A. Oh, yes; it is possible to have an error in it, sure.

R. X Q. 1110. Well, you are referring in your conclusion there that the difference is in hours?

A. You have an item of \$7,078.80 there which was made up of 4,164 hours at \$1.70 an hour. No mention was made if it was

made up with skilled, semiskilled, improvers, bull gangs, or anything at all.

1190 R. X Q. 1111. That is dollars?

A. Yes.

R. X Q. 1112. You refer in your report to some estimate of hours. I want to know where you got it from.

A. Give me sufficient time to go over the entire set-up, possibly I can find where I arrived at it. Just glancing over it, my mind is not as brilliant as some people's.

R. X Q. 1113. You make the statement at the top of that page that plaintiff's original estimate is incorrect by reason of this?

A. It is.

R. X Q. 1114. You are not able to say now where you got the figure from?

A. I can cite one figure where you are incorrect. The item on the original estimate for timekeeper and material man shows \$20.00; turn over to your expenditure and you paid the timekeeper \$25.00. That is one error.

R. X Q. 1115. How much difference would that be?

A. It is a difference.

R. X Q. 1116. How many weeks?

A. I would have to check that. Timekeeper and material man, \$20.00; then timekeeper, 26 weeks at \$25.00 a week.

R. X Q. 1117. An increase of \$5.00 a week for 26 weeks, 1191 \$130.00. Is that correct? Now, what do you estimate the difference in your report?

A. I didn't make any mention—

R. X Q. 1118. Are you sure?

A. I will check it and see.

R. X Q. 1119. Let's read at the bottom of page 8 and top of page 9. Will you read that statement in your report? I will read it for you. "Therefore, this indicates that the timekeeper was paid \$5.00 more per week on the estimate of what was actually expended than on the original estimate—a total difference of \$410.00." Where did you get that \$410.00?

A. You had twelve weeks in at \$20.00, didn't you, in your original estimate?

R. X Q. 1120. That is right.

A. What does that amount to? Is that \$240.00? Twelve weeks at \$20.00, \$240.00.

R. X Q. 1121. That is right.

A. \$20.00 a week. What is 26 weeks at \$25.00 a week?

R. X Q. 1122. That is the way you figure it?

A. I was setting forth the difference deducted, 26 weeks at \$25.00.

R. X Q. 1123. Isn't it a fact we admit in the claim this job took something like two and one-half months longer than the estimate?

A. That is correct.

1192 R. X Q. 1124. And wouldn't we require a timekeeper?

A. That is correct. I didn't make any statement; I just set forth what you have in your estimate.

R. X Q. 1125. That is where you got it in your report?

A. Yes, I didn't establish the fact it was not required. I was attempting to cite that you paid \$5.00 a week more on your expenses than you did on your estimates.

Mr. DOYLE. Well, we admit that. That is all.

Mr. KILPATRICK. May I ask Mr. Dodd a couple of questions?

The COMMISSIONER. Yes.

By Mr. KILPATRICK:

R. X Q. 1126. Mr. Dodd, you testified, I believe, at the last hearing here in Washington, that there were some delays on each side as between Redmond and the Blair organization but none of any particular consequence on a job of this kind?

A. Not that I observed.

R. X Q. 1127. Nothing important enough to record in the log, I don't suppose?

A. Not that I observed.

R. X Q. 1128. I wonder if you could explain to us why in April, May, and June, your log contains repeated statements, "Blair is holding up Redmond" or that "Redmond has caught up with Blair and is waiting for Blair to proceed," but nowhere in your log do you refer to Blair's being delayed in any way by Redmond?

A. As I said before, that mechanically, I don't recall what date it was handled, but it was handled by another representative on the site. For such period that he was on the site as Government representative, he handled the mechanical end himself, Mr. Johnson did it. I didn't have anything to do at all with the dictation or making up of the mechanical end of it. In my observation of the job the general construction, which was Blair's if I observed a delay—it would have to be more than every small sleeve that had not been put over in the corner because that is no more than happens on any job of that size.

R. X Q. 1129. I believe you testified it was about equal on each side and you have no other explanation—

A. As I see it.

R. X Q. 1130. You have no other explanation of why there are dozens of references to Blair holding up Redmond and none that Redmond was holding up Blair except that Mr. Johnson was taking care of that?

By the COMMISSIONER:

R. X Q. 1131. One held up one as much as the other held up the other?

A. That is my general observation over the whole group.

By Mr. KILPATRICK:

R. X Q. 1132. You would not be in a position to state why after the Virginia Engineering Company came in and increased its force to ten times that of Redmond, you would not be able to explain why thereafter there isn't anything in the log about either delaying the other?

A. I wouldn't know. Mr. Johnson handled that.

By the COMMISSIONER:

R. X Q. 1133. Do you recall either holding up each other after the Virginia Engineering Company came in?

1194 A. On a job of that size, you have a certain amount of delay. You get two separate contractors together and you are ready to pour on such and such a building, the man hasn't set the sleeve in there. By the time I get there the man is setting the sleeve. He came in and complained. If Blair put in the slab and finished about five o'clock in the evening, he would complain that they got to give us time to get in the electric conduit and sleeve.

R. X Q. 1134. This was normal in that respect?

A. That was normal.

The COMMISSIONER. Any further questions?

Mr. KILPATRICK. That is all.

Redirect examination by Mr. JULLICHER:

R. D. Q. 1135. I show you Defendant's Exhibit A and direct your attention to Wednesday, May 2, 1934, and ask you to read the last sentence with reference to the Redmond contract.

A. "Roberts then entered complaint that Redmond held him up by not locating downspout boxes."

By the COMMISSIONER:

R. D. Q. 1136. Until immediately prior to the time—

A. Concrete was to be poured. That is one of the instances I was speaking of.

By Mr. JULLICHER:

R. D. Q. 1137. That is one of the instances where the log notes a delay—

Mr. KILPATRICK. It notes a complaint by Roberts.

1195 By Mr. JULICHER:

R. D. Q. 1138. Mr. Dodd, where does most of the information come from that makes up the log?

A. Various sources; relative to labor, the number of men and the type of skilled mechanics, is usually obtained from the general contractor.

R. D. Q. 1139. The general contractor supplies most of the information that makes up the log other than your notes made by yourself?

A. That is correct.

R. D. Q. 1140. Both as to the number of men on the job and to various complaints that might be made?

A. We would not have ordinarily, we were not accustomed on a Government job of that size to have a number of men sufficient to go over the job. Where you have a general contractor and several others, we had several others other than the Blair contract, and each one had numerous subcontractors, to check each man individually and what he was doing and his classification, it would take at least one or two men extra to do a job of that size, clerks.

R. D. Q. 1141. About how many subcontractors were there on this job?

A. I would say approximately over the entire contracts, there must have been at least fifty. I wouldn't say definitely, but off-hand, approximately fifty. And we had general contracts with Blair; the elevator contract was two; the refrigerating contract, three; water tank, four.

R. D. Q. 1142. The heating?

A. Heating, plumbing, and electrical, five, and I think we had six or five general contractors.

1196 R. D. Q. 1143. And you had a more or less limited staff to inspect?

A. We did; just two of us.

R. D. Q. 1144. And watch this work?

A. Two of us the major portion of the time.

R. D. Q. 1145. You had other inspectors under you?

A. Sometimes. Pouring concrete, at the mix plant, but they were only on the concrete.

R. D. Q. 1146. What was your chief difficulty with reference to inspection in connection with this job?

A. Well, the largest amount of trouble that we had on the job was trying to eliminate the use of unskilled and semiskilled labor performing skilled mechanics' duties.

R. D. Q. 1147. What did that necessarily entail on your part?

A. In the way of inspection?

R. D. Q. 1148. Yes.

A. Well, at such times as it was determined that there were certain men who were performing unskilled or semiskilled men performing duties that ordinarily and customarily were performed by a mechanic. Passing along, a man might be tying steel. I would ask him what his name was and when the pay roll would come into our office at the end of the week, I would check this man as to what he was carried as. It might show on this particular laborer, checked on this particular day, was tying steel. There were numerous cases like that. Captain Feltham and I usually start every morning, one would go in one direction and one in the other. Lots of times we would double back. If certain things went on I didn't think was proper, I would double back and go over the same course before completing the round.

1197 R. D. Q. 1149. Did you actually find men listed as laborers doing skilled work?

A. I think we did. It is in the record; particularly cement finishers. That is just one I recall. We had quite a discussion over the reinforcing steel rodmen, the classification of those men. It started out by the contractor superintendent stating that he commonly used unskilled labor and paid them five to ten cents an hour more than the ordinary labor scale.

Mr. KILPATRICK. If the Commissioner please, in the interest of trying to cut down the record, this whole story was told by Mr. Dodd at the hearing. I hope we are not going over that entire thing agains.

Mr. JULICHER. I don't intend to.

By Mr. JULICHER:

R. D. Q. 1150. Mr. Dodd, I think you stated that there was an amount of concrete work that had to be removed?

A. Considerable amount.

R. D. Q. 1151. Before you go any further, you say "considerable amount." What, in your mind, would be a considerable amount?

A. Well, I say a considerable amount for a job that size. It is much in excess of any I ever had. On jobs considerably larger than that never had so much concrete removed from one project as there was from that. I can state several instances where it was removed. One instance—

R. D. Q. 1152. Have you looked over this log during the luncheon interval?

A. Yes, sir.

R. D. Q. 1153. Did you find any instances where faulty tile was discovered?

A. Yes.

1198 R. D. Q. 1154. Will you please cite the dates and what it says?

A. Under date of October 25, under Building No. 7, "patching and replacing condemned quarry tile and border." Under date of October 26, Building 7, it states here, "Cleaning quarry tile base and border, patching plaster, first and second floors, removing and relaying defective quarry tile base and border in first and second floor of Building 7."

Under date of November 8, under Building No. 2, "removing and replacing quarry tile base on second and third floor." November 9, general construction same as Thursday, November 8, which include that same thing; that is, removing the base. On November 10, "removing and replacing defective quarry tile base on first, second, and third floors of Building 2."

On the 12th, on Building No. 2, "removing and replacing rejected tile base and border on first, second, and third floors." November 13, Building No. 2, "removing and replacing rejected tile base and border."

R. D. Q. 1155. Mr. Dodd, does hit log pretend to show everything that happened on this job?

A. No, sir.

R. D. Q. 1156. What did it try to include?

A. Well, —

R. D. Q. 1157. Just the highlights.

A. Primarily indicate the progress of the project and just more important items relative to progress and any difficulties that were considered worth entering into the log.

R. D. Q. 1158. Suppose you did try to include everything, what kind of log would you finally have?

A. You would have a log too large to cart around much.

1199 R. D. Q. 1159. Are these subcontractors referred to individually in the log?

A. No, only under general contractors.

R. D. Q. 1160. You do not recognize subcontractors as such, do you?

A. No. Each contractor, for instance, Algernon Blair and his subcontractors are carried under one heading. Virginia Engineering Company and its contractors are all carried under one heading. The subcontractors are not listed separately.

R. D. Q. 1161. This occasion cited in your report, in which you have reported that you and Captain Feltham came across five improvers and one skilled worker on this tile work, was it set out in the pay roll in that way, if you know?

A. As I recall the method which we used for checking these men, passing through the building, we would see these men setting tile, and we asked the men their names and they were put in a notebook, and when the pay roll was submitted covering that particular week or day to our office for checking, then we checked

these names which we had obtained over in the building setting tile, and they were carried as unskilled laborers, I think, in this particular instance.

R. D. Q. 1162. Were they working independently?

A. Yes.

R. D. Q. 1163. Do improvers work independently?

A. I have known them to.

R. D. Q. 1164. In your experience?

A. They work with a mechanic, not in separate buildings along.

1200 R. D. Q. 1165. When the daily log reports that no work was being done on a building, does it mean that no work could be done or that no work was being done?

A. Well, there was an instance whereby in this daily log it indicates an instance where no work could be done; there are other instances where it could have been done but was not being done.

R. D. Q. 1166. Tell me this, Mr. Dodd. How much material does the heating contractor need in the process of locating sleeves and other outlets?

A. Very small amount. For instance, galvanized metal sleeves, and, in fact, I would say a day's work in locating sleeves, the material for a mechanic would not exceed sleeves.

By the COMMISSIONERS:

R. D. Q. 1167. Who locates the sleeves?

A. The general contractor was required to set them, Algernon Blair, but the mechanical contractor was required to locate the spot for the sleeve and the general contractor put it in place and what necessary anchorage was required for the sleeve.

By Mr. JULICHER:

R. D. Q. 1168. How many plumbers or whatever is used to locate the sleeves are needed to take care of a building of the size of Building No. 2?

A. Two men could locate any of the sleeves in a reasonable time.

R. D. Q. 1169. It is not much of a job then, is it?

A. Half a day, all located.

R. D. Q. 1170. In one building?

A. One floor. All the forms have to be erected before they locate the sleeves.

1201 Mr. JULICHER. That is all.

The COMMISSIONER. Any further questions?

Mr. DOYLE. Yes, sir.

Re-cross-examination by Mr. DOYLE:

R. X Q. 1171. You made reference to your field notebooks. Do you preserve your field notebooks? Are they in existence?

A. All our records when we complete a project are left at the job site and turned over to the manager in charge of the facility. If we require any records, we get them from there.

R. X Q. 1172. You do not have your notebooks showing the notations on those tile setters?

A. They are usually left at the station.

R. X Q. 1173. You have made reference to the log here. Is this replacing rejected tile work—these particular dates the subcontractor was also engaged in laying tile and setting tile in other buildings?

A. The log so states.

R. X Q. 1174. This was not the only work he was doing?

A. No; the log does not indicate.

R. X Q. 1175. Did you go all the way through the report to see if there were any other notations of relaying rejected work?

A. I went from August 24 up to 11/13, I believe.

R. X Q. 1176. Those are the only ones you found?

A. Yes.

R. X Q. 1177. And those were Buildings 7 and 2?

A. 6 and 7 and 2, and No. 1 is included in that too, I think.

1202 R. X Q. 1178. Those you read only referred to Building No. 2 and Building No. 7. I would like to ask you again to refresh your recollection and state if you think you might possibly be in error with reference to your testimony on cross-examination as to what these two columns in your log represent, one column being "Number of Men at Work," and the other "Number of Men on Pay roll." I am not leading you into any unfair admission, but it seems to us that the men on the pay roll in that column must be inclusive of the men at work. Blair's contract would not carry on October 25, 767 men at work and then in addition carry 1,106 men on the pay roll.

A. Well, I think the pay rolls will go with that. They had a considerable number of men, I have seen as high as one hundred at a time hanging around the office waiting for work, not carried into the pay roll.

R. X Q. 1179. Are you sure these men on the pay roll, indicated in this log, are not inclusive of the men that worked in the other column? Do you see my point?

A. This is the number of men actually employed on the job sites as of April 2, 382 men. This column here is the number of men carried on the pay roll not employed as of that date, and this column and that column added together totals that. Do you understand?

Mr. JULIÖHER. They are inclusive, in other words.

Mr. DOYLE. He says they are not. I say they are. According to my records, they are.

The WITNESS. The total in this column, 382 men that worked on the job that day and here is 715 on the pay roll.

By Mr. JULICHER:

1203 R. X Q. 1180. On the pay roll?

A. On the pay roll.

By Mr. DOYLE:

R. X Q. 1181. But not at work?

A. Yes.

By the COMMISSIONER:

R. X Q. 1182. How many?

A. 715.

By Mr. JULICHER:

R. X Q. 1183. Where did you get that figure?

A. And these men employed. The contractor attempted to work a full week of six days, as I recall it, and carry on his project six days a week. It was necessary that he use approximately what would be three shifts due to the limited number of hours one employee could perform.

By the COMMISSIONER:

R. X Q. 1184. The number of hours or days?

A. Limitation of hours, man-hours per week. It necessitated the excessive number of men on the pay roll.

Mr. DOYLE. Let me ask you this. I am very positive that Mr. Dodd is confused about this, and may I ask the witness to refresh his recollection off the record later and communicate the information to his counsel and let us stipulate what the correct facts are, because his statement does not coincide—

The COMMISSIONER. It may be understood if the witness communicates with Government counsel, and counsel for the
1204 Government communicates with counsel for the plaintiff, it may be substituted in lieu of his testimony.

By the COMMISSIONER:

R. X Q. 1186. Is that all right with you, Mr. Dodd?

A. Yes, sir.

Mr. DOYLE. That is all.

Redirect examination by Mr. JULICHER:

R. D. Q. 1186. Where do those figures come from? Who supplies them?

A. The contractor.

R. D. Q. 1187. The contractor supplies those figures?

A. Yes, sir.

R. D. Q. 1188. They include not only Blair's men but all the subcontractor's men?

A. That is right. Under his particular contract all of Blair's contract and all of the subcontractors' men are included in that column.

By the COMMISSIONER:

R.D. Q. 1189. And you estimated fifty subcontracts?

A. Not under Blair's contract, over the entire period of the job.

Re-cross-examination by Mr. DOYLE:

R.X Q. 1190. These contractors and subcontractors supplied this information in the form of duplicate pay rolls?

A. The daily work sheet. The subcontractor—it is customary to furnish him with a daily work sheet, he turns it over to the general contractor, and the general contractor compiles his 1205 with the subcontractor and turns it over to us.

The COMMISSIONER. The figures based on the pay roll are much less likely to be in error than some other sheet. If you are paying them once a week and paying too many, then you kick and if you pay too few, the other fellow kicks. Is there any further examination of this witness?

Mr. JULICHER. That is all.

(Witness excused.)

EUGENE C. SAUER, a witness produced on behalf of the defendant, having been previously sworn by said commissioner, was examined and, in answer to interrogatories, testified as follows:

By the COMMISSIONER:

Q. 1. Give us your full name.

A. Eugene C. Sauer. I am a special agent of the Federal Bureau of Investigation.

Q. 2. How old are you?

A. Forty-five in June.

Q. 3. And you reside where?

A. Washington, D. C.

Q. 4. And your occupation is what?

A. Special Agent of the Federal Bureau of Investigation, specializing in accounting.

Q. 5. Do you have any interest in the outcome of this lawsuit?

A. I do not.

The COMMISSIONER. You may proceed.

1206 Direct examination by Mr. JULICHER:

Q. 6. What do you specialize in?

A. Accounting investigations.

Q. 7. Was the claim of Algernon Blair in the Court of Claims submitted to you for an accounting and investigation?

A. It was originally submitted to me in the Washington field office. However, I performed only that investigating work which is covered here in the District. I did not perform an investigation of the accounting matters outside of the District of Columbia.

Q. 8. I show a document and ask you what it shows.

A. This document is a summary of the partial payment vouchers to Algernon Blair under the contract in suit, VaC 24, which I summarized from the original vouchers at the General Accounting Office. These vouchers are now in court, and the document also contains a charted map here showing the performance on the contract in accordance with the partial payment vouchers listed immediately above. These partial payment vouchers were issued monthly by the contractor, certified by him or his superintendent and, in turn, certified to by the Government superintendent in the job. Captain Feltham certified these vouchers and then they were paid on the dates shown in the second to the last column. They were paid monthly.

Then about the middle I show the percentage of the contract according to the accumulated amount of completion, which is shown under column, well, the second column of figures. Those figures are taken from the vouchers, then the percentage calculated by me. Then that same percentage is carried down to the chart showing progress on the job, month by month, as reflected by these partial payment vouchers.

1207 Q. 9. This curve shows the progress curve from the beginning to the completion.

A. It does according to the partial payment vouchers.

Q. 10. And you are able to tell what percent of the work was every month from there?

A. The accumulated percentages are shown, only accumulated totals. The month by month total is not shown separately. The period of performance on the contract is shown at the bottom of the chart covering the 420 calendar days and dating from December 21, 1933, to February 14, 1935.

Mr. JULICHER. I believe that it all. I offer this exhibit in evidence as Defendant's Exhibit I-I.

The COMMISSIONER. A copy has been furnished plaintiff's counsel.

Mr. JULICHER. Yes, Sir.

The COMMISSIONER. It may be admitted and marked "Defendant's Exhibit I-I."

(Said schedule and chart, so offered and received in evidence, was marked "Defendant's Exhibit I-I," and make a part of this record.)

Mr. KILPATRICK. It would like to say for the record when the time comes, we will show it is a duplicate of the curve appearing on Plaintiff's Exhibit No. 34.

Mr. JULICHER. That is all.

Mr. KILPATRICK. No cross-examination.

Mr. DOYLE. No cross-examination.

The COMMISSIONER. You are excused.

(Witness excused.)

Mr. JULICHER. May I make one more statement? With 1208 reference to the report of Mr. Rauber, who was the special agent for the P. W. A., who made the investigation, Mr. Kilpatrick and I have entered into a stipulation to admit these reports in evidence rather than go out to the Pacific Coast and take his testimony. It will be signed in the near future.

The COMMISSIONER. Are your offering something to be marked?

Mr. JULICHER. No; we are stipulating something.

(Here followed discussion off the record.)

Mr. JULICHER. There is a group of letters I would like to offer in evidence. They carry the certification of the Veterans' Administration.

The COMMISSIONER. A certificate has never made any incompetent evidence competent. When you have competent evidence, it does do away with bringing them here. If it is competent, it serves to do away with the witness. We will take a recess for five minutes.

(Thereupon, a five-minute recess was taken.)

The COMMISSIONER. You may proceed.

Mr. JULICHER. This is the exhibit I offered without objection.

Mr. KILPATRICK. No objection.

The COMMISSIONER. It will be admitted and marked "Defendant's Exhibit JJ."

(Said group of letters, consisting of nine pages, so offered and received in evidence, was marked "Defendant's Exhibit JJ," and made a part of this record.)

Mr. JULICHER. That is all, Your Honor.

The COMMISSIONER. Has either side any proof they can put in by agreement?

1209 Mr. DOYLE. If Your Honor pleases, I would like to put one witness on from Roanoke.

The COMMISSIONER. Can't we put him on by agreement?

Mr. JULICHER. By agreement—I have no objection. All I have left is the bookkeeping statements on the Roanoke and Blair claims. I do not have them ready. The F. B. I. has not submitted its report.

(Here followed discussion off the record.)

Mr. DOYLE. We would like to put Mr. Godbey on for rebuttal testimony at this time if there is no objection.

The COMMISSIONER. You may proceed.

REBUTTAL TESTIMONY

FRANK M. GODBEY, a witness produced on behalf of the plaintiff, having been previously sworn by said commissioner, was further examined and testified as follows:

By the COMMISSIONER:

R. D. Q. 219. You have been sworn, have you?

A. Yes, sir.

R. D. Q. 220. Give us your full name.

A. Frank M. Godbey.

The COMMISSIONER. All right.

Mr. DOYLE. If Your Honor pleases, I would like to introduce in evidence, first, a certified copy of the charter under the laws of the Commonwealth of Virginia of the Roanoke Marble and Granite Company.

The COMMISSIONER. It will be admitted and marked "Plaintiff's Exhibit 108."
1210 (Said charter, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 108," and made a part of this record.)

Redirect examination by Mr. DOYLE:

R. D. Q. 221. Mr. Godbey, you are the same that Mr. Godbey that testified in this case in Roanoke last April 1938?

A. Yes, sir.

R. D. Q. 222. And you stated your qualifications and your years of experience?

A. Yes, sir.

R. D. Q. 223. And you are now employed by whom?

A. Roanoke Marble and Granite Company.

R. D. Q. 224. The subcontractor in this case?

A. Yes.

R. D. Q. 225. I believe you testified you had been employed by this company for the last twelve years?

A. Twelve or thirteen; about that long.

R. D. Q. 226. In what capacity are you still employed?

A. Foreman on their outside construction.

R. D. Q. 227. You are a skilled mechanic and tile setter?

A. Yes, sir.

R. D. Q. 228. I will ask you, Mr. Godbey, there has been some testimony introduced by the Government in this case since our

direct examination of witnesses with reference to custom and uses of the trade of employing improvers.

A. Yes, sir; they do.

1211 R. D. Q. 229. Semiskilled or experienced helpers as tile setters?

A. We always have and still do.

R. D. Q. 230. What are the custom and uses of the trade for the employment of such improvers?

A. We use one experienced helper with each mechanic, and the Union okays it. That is all right with the Union and on every Government job, it is all right with the Government.

R. D. Q. 231. Would it be possible for one improver to serve four or five skilled mechanics in laying tile base and border?

A. No, sir; it would not.

By the COMMISSIONER:

R. D. Q. 232. What is an improver?

A. An apprentice.

R. D. Q. 233. Is he at the bottom of the schedule?

A. There are different stages of improvers.

R. D. Q. 234. What is his work?

A. All the same thing.

R. D. Q. 235. Improver and what else?

A. Improver, apprentice boy. An apprentice is paid somewhere between the laborer and mechanic.

R. D. Q. 236. They get the same trade?

A. Yes, sir; depending on how many years he has served at his trade.

By Mr. DOYLE:

R. D. Q. 237. I understand there are different rates of pay for improvers as such, depending on their experience. Is that right?

1212 A. Yes, depending on how long they have served.

R. D. Q. 238. In this particular instance, the rate was sixty cents an hour?

A. Yes, for semiskilled men.

R. D. Q. 239. Did you pay any amount in excess of that?

A. Yes, sir. One boy in particular served over three years and he got 75 cents, I can remember.

R. D. Q. 240. That is also termed in your trade as intermediate labor?

A. Yes, sir.

R. D. Q. 241. To get back to my immediate question, tell the Court why one improver could not efficiently serve four mechanics who were setting tile at one and the same time in one room or in more than one room.

A. Because a tile setter wants so many different things that one man could not wait on that many. It would be just too much for a man to do.

R. D. Q. 242. State for the record what are those particular things he would be called upon to do.

A. If putting wall tile in this room, wall tile and base, plinths, bullnose, stops, and so forth. They are different pieces of tile you have to use in a special place.

R. D. Q. 243. What does he do?

A. He soaks them and brings them to the mechanic when he needs them.

R. D. Q. 244. He selects them?

A. Yes, sir.

1213 R. D. Q. 245. In addition to that, he does the grouting and the wiping off of the finished tile?

A. Yes, sir; that is part of his duty, too. It just goes to show that a common laborer could not do it. One improver or one apprentice boy could not do it, wait on more than one mechanic.

R. D. Q. 246. What system did you employ on this particular job, the Veterans' Hospital at Roanoke?

A. At the beginning or at the end? We had to change our system a little bit. We started with one mechanic, one helper and one laborer.

R. D. Q. 247. What does the laborer do?

A. Common laborer.

R. D. Q. 248. What does he do?

A. Brings sand and cement in the building.

R. D. Q. 249. Move materials around?

A. Yes, sir; shift materials around on the job.

R. D. Q. 250. There has been some testimony that I believe you and some other mechanics who were employed on this job were also employed under the direction of Government Inspector Dodd in laying tile at the Veterans' Hospital at Phoebus.

A. It was an Old Soldiers' Home at Phoebus. Yes, sir; we did work there.

R. D. Q. 251. What were you doing there?

1214 A. I was a marble setter and tile setter.

R. D. Q. 252. Did you use improvers on that job?

A. Yes, sir; I took a man from Roanoke with me.

R. D. Q. 253. What is his name?

A. Pat Garlick.

R. D. Q. 254. What did you pay him?

A. He started at forty-five and got a raise on the job to sixty cents.

R. D. Q. 255. He was an improver?

A. Yes, sir; an apprentice boy on the way up.

R. D. Q. 256. Did he work for you alone or for other mechanics?

A. No, sir; my apprentice worked in the room with me. He didn't help any of the other mechanics but me.

R. D. Q. 257. Who were the other mechanics?

A. Nelson Garlick, Hugh Freeman—

R. D. Q. 258. A man by the name of Brown?

A. Yes, sir.

R. D. Q. 259. Did they each have improvers?

A. Yes, sir.

R. D. Q. 260. How big a job was that as compared with the Roanoke Veterans' Hospital?

A. In the marble and tile work?

R. D. Q. 261. Yes.

A. It wasn't as large; it didn't take as long.

1215 R. D. Q. 262. Was it a contract job or purchase and hire job by the Government?

A. Purchase and hire. We were paid direct by the Government.

R. D. Q. 263. Did you have much condemnation work in that case?

A. No, sir; the job went on through nice.

R. D. Q. 264. No trouble about the quality of your work?

A. No, sir; not a bit.

R. D. Q. 265. You worked under the supervision of Mr. Dodd?

A. Yes, sir.

R. D. Q. 266. The same Mr. Dodd who testified in this case?

A. Yes, sir.

R. D. Q. 267. In your work as foreman for the Roanoke Marble and Granite Company on this particular job, are you familiar with the pay rolls of that company?

A. Yes, sir; I either made them up or helped make them up each week.

R. D. Q. 268. I will ask you to examine the pay rolls on this job to prepare yourself to testify on certain points. Have you done that?

A. Yes, sir.

R. D. Q. 269. I show you pay roll for the week of August 24 of the Roanoke Marble and Granite Company.

A. That was when we first started; yes.

1216 R. D. Q. 270. That is your name listed on there, "Godbey" as mechanic?

A. Yes.

R. D. Q. 271. You are listed there at the wage of \$1.10 per hour?

A. Yes.

Mr. DOYLE. I offer that in evidence as Plaintiff's Exhibit No. 109.

The COMMISSIONER. It will be admitted and marked "Plaintiff's Exhibit No. 109."

(Said pay roll for week of August 24, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 109," and made a part of this record.)

By Mr. DOYLE:

R. D. Q. 272. That covers the first week?

A. Yes; when we were first starting the job.

Mr. JULICHER. What is this? I do not quite get what this is supposed to show. It says "weekly report" on the top and lists a number of names below. There is no signature as to who made it out or no certification of it at all whatever.

The COMMISSIONER. He told what it was in the record.

The WITNESS. Yes, sir. It is my pay roll for the first week when we went on the job.

By Mr. DOYLE:

1217 R. D. Q. 273. Taken from the company's records?

A. Yes, sir.

R. D. Q. 274. Where did you get them; from Mr. Walters?

A. Mr. Walters.

By Mr. JULICHER:

R. D. Q. 275. Was it your job to make these out?

A. Yes, sir.

R. D. Q. 276. You made them out?

A. Yes. We hired a timekeeper later on. The job got too big.

R. D. Q. 277. You are not listed as a foreman, just a mechanic?

A. Just a mechanic until the job got big enough to require a walking boss. Then my pay went up as a foreman.

R. D. Q. 278. Were you foreman at that time?

A. Yes, sir; for years before then and after that.

Mr. JULICHER. Your Honor, I am not convinced—

The COMMISSIONER. If you are objecting, it is overruled and exception noted.

By Mr. DOYLE:

R. D. Q. 279. You took these from office records of this file?

A. Yes, sir; pay rolls on the job.

R. D. Q. 280. I show you what purports to be the weekly pay roll of this company for the week ending August 30, 1934. Is that

1218 your pay roll and receipts?

A. Yes, sir; that is our second pay roll, the second week we worked.

R. D. Q. 281. How many mechanics did you have that week on that pay roll, skilled mechanics?

A. Five men at \$1.10 an hour.

R. D. Q. 282. How many improvers or apprentices?

A. One; at sixty cents an hour.

Mr. DOYLE. I offer that in evidence as Plaintiff's Exhibit No. 110.

Mr. JULICHER. Same objection.

The COMMISSIONER. It will be admitted as Plaintiff's Exhibit No. 110.

(Said pay roll for week of August 30, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 110," and made a part of this record.)

By Mr. DOYLE:

R. D. Q. 283. I show you weekly pay roll for the week ending September 7, Roanoke Marble and Granite Company, same job; do you know that to be the pay roll?

A. Yes, sir; that is our pay roll.

R. D. Q. 284. Examine them and tell me how many skilled mechanics you had on the job that week.

A. We had four men at \$1.10.

R. D. Q. 285. How many improvers did you have on 1219 there at sixty cents an hour?

A. Two.

Mr. DOYLE. I offer that in evidence.

The COMMISSIONER. It will be marked "Plaintiff's Exhibit No. 111."

(Said pay roll for week of September 7, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 111," and made a part of this record.)

By Mr. DOYLE:

R. D. Q. 286. I show you pay roll for the week ending September 16, this company, same job. Is that the pay roll?

A. Yes, sir; that is our pay roll.

R. D. Q. 287. How many skilled mechanics did you have on the job that week at \$1.10?

A. Six.

R. D. Q. 288. How many improvers at sixty cents an hour or more?

A. Two; one man at 60, one man at 75.

Mr. DOYLE. I offer that in evidence.

The COMMISSIONER. It will be marked "Plaintiff's Exhibit No. 112."

(Said pay roll for week of September 16, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 112," and made a part of this record.)

By Mr. DOYLE:

R. D. Q. 289. I show you pay roll for the week ending 1220 September 22, same job, this company. Is that it?

A. Yes, sir; that is our pay roll.

R. D. Q. 290. How many skilled mechanics did you have on the job at that time at \$1.10 per hour?

A. We had seven.

R. D. Q. 291. How many improvers at 60 cents an hour or more?

A. Not any.

R. D. Q. 292. Why not?

A. About that time we were told we could not use them; we stopped.

R. D. Q. 293. Told by whom?

A. Mr. Dodd.

R. D. Q. 294. That you could not use improvers?

A. Could not use semiskilled men; a man was a laborer or a mechanic.

R. D. Q. 295. As a result, what did you do? What practice did you adopt then to serve mechanics?

A. We had to hire laborers to wait on the mechanics.

R. D. Q. 296. At what price?

A. Forty-five cents.

R. D. Q. 297. How many laborers per man?

A. Two men.

R. D. Q. 298. More than one laborer?

A. One laborer could not wait on a mechanic like one skilled apprentice.

1221 R. D. Q. 299. How many laborers did you use?

A. Two laborers to do the work of one semiskilled man.

R. D. Q. 300. How much did you pay them?

A. Forty-five.

R. D. Q. 301. Colored or white?

A. Both.

R. D. Q. 302. What did you do with reference to these men you formerly employed as improvers? Cecil Marshall; what did you do with him?

A. We raised him to \$1.10 an hour.

R. D. Q. 303. And used them as mechanics?

A. We tried to; yes.

R. D. Q. 304. Did that work out?

A. No, sir. We ran into trouble with the other mechanics and the Union, too.

By the COMMISSIONER:

R. D. Q. 305. A. F. of L. or C. I. O.?

A. A. F. of L.

By Mr. DOYLE:

R. D. Q. 306. What did you do?

A. We had to cut them off entirely.

R. D. Q. 307. Let them go?

A. Yes, sir.

Mr. DOYLE. I offer this one in evidence as No. 113.

1222 The COMMISSIONER. It will be marked "Plaintiff's Exhibit No. 113."

(Said pay roll for week of September 22, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 113," and made a part of this record.)

By Mr. DOYLE:

R. D. Q. 308. What did you do? Did you use any improvers after that at 60 cents an hour?

A. Yes, sir; on the terrazzo we did use them.

R. D. Q. 309. What was the occasion of that?

A. They were the terrazzo grinders; the men that grind the terrazzo floors after laid.

R. D. Q. 310. Is that customary in the trade?

A. Yes, sir. We started them on this particular job at 60 cents an hour.

R. D. Q. 311. Mr. Wilson testified there was some question about that at the time?

A. Yes, sir; there was.

R. D. Q. 312. Did you use any improvers or semiskilled experienced helpers for the tile setters?

A. No, sir; not after Mr. Dodd's ruling, we didn't.

R. D. Q. 313. What did you use from that time on?

A. Laborers.

R. D. Q. 314. All common laborers?

A. All common laborers at 45 cents an hour.

1223 R. D. Q. 315. Do you recall the occasion of this ruling that the Government Inspector Dodd made with reference to this semiskilled or intermediate labor?

A. Very well; yes, sir.

R. D. Q. 316. What was it?

A. He just said we could not use them; there was no provision for semiskilled men.

R. D. Q. 317. Did he say that to you?

A. Yes, sir; he told me in person.

R. D. Q. 318. He told you in person?

A. Yes, sir.

R. D. Q. 319. What did you do?

A. I got Mr. Roberts and went to Roanoke and got Mr. Wilson and brought him out.

R. D. Q. 320. What did you do?

A. We all went to Mr. Dodd's office.

R. D. Q. 321. Were you with Mr. Wilson in Mr. Dodd's office?

A. Yes, sir.

R. D. Q. 322. Can you fix that date?

A. I can by looking at the time sheet. It was between the 16th and 22d of September, 1934.

R. D. Q. 323. What are you so positive of that?

A. Because we have these men on the time sheet at 60 and 75 cents; after that date they appear at \$1.10.

R. D. Q. 324. To what men are you referring to by names?

1224 A. Cecil Marshall and Warren Hastings, the two in particular.

R. D. Q. 325. Do you recall you were at Mr. Dodd's, particularly with Mr. Wilson, and who else?

A. C. W. Roberts.

R. D. Q. 326. Who is C. W. Roberts?

A. General superintendent of the job.

R. D. Q. 327. Did either of those persons protest that ruling?

A. We all three did; yes, sir.

R. D. Q. 328. Now, there has been some testimony here—will you kindly refer to those pay rolls? There has been some testimony here with reference to inspection of your work, I believe, in Building No. 7 at or about the time you began the week of August 24 and week of August 30 to lay tile base and border tile. Who way laying that tile, what mechanics, when you started out? Can you tell from your pay rolls or from your recollection?

A. Yes, sir. We have Henry Mitchell, Vic Principe.

R. D. Q. 329. Skilled mechanics?

A. Yes, sir; from right here in Washington.

R. D. Q. 330. At \$1.10 an hour?

A. Yes, sir.

R. D. Q. 331. Were you there at the time? Were you present on the job?

A. Yes, sir.

1225 R. D. Q. 332. In charge of the work?

A. Yes, sir; the first man to go on the job for Roanoke.

R. D. Q. 333. You laid some tile for inspection for Mr. Dodd?

A. I laid one room for Mr. Dodd and Captain Feltham to inspect.

R. D. Q. 334. They said okay?

A. Yes.

R. D. Q. 335. Did you at that time or at any time use improvers or unskilled labor to lay tile?

A. No, sir; we did not.

R. D. Q. 336. Will you look at those pay rolls and tell me what those men were doing about that time in Building No. 7?

A. The sixty-cent men?

R. D. Q. 337. Yes; intermediate labor.

A. Waiting on the tile setters as they always did, bringing tile.

R. D. Q. 338. You have quite a number of men at 45 cents an hour. What were they doing?

A. Getting material into the building—lime, cement.

R. D. Q. 339. Were you attempting to use any of those men as helpers to skilled mechanics?

A. No, sir; not at that time.

R. D. Q. 340. They were distributing material—sand, cement, tile, et cetera?

A. Yes.

(Here followed discussion off the record.)

By Mr. DOYLE:

R. D. Q. 341. Mr. Godbey, there has been some testimony with reference to the use of improvers or helpers in marble work. What is the custom of the trade in that?

A. We do use them, one to a mechanic.

R. D. Q. 342. What do you use them for?

A. To drill holes in the marble, drill anchor holes, get the anchors, mix the plaster you set the marble with.

R. D. Q. 343. Drilling anchor—

A. Drilling anchor holes back of the marble, that you can't see that you fasten your marble to the wall with.

R. D. Q. 344. What did you have to do in this particular case when you could not use them?

A. Use laborers.

R. D. Q. 345. Use laborers?

A. The laborer does all the things a helper ordinarily would do.

R. D. Q. 346. For a skilled mechanic?

A. Even though you have two laborers to one apprentice boy, it still slows him down. There are so many things a laborer can't do that an apprentice can do.

1227 R. D. Q. 347. There has been testimony as to the faulty work that had to be replaced, especially on Building 2. Do you remember that particular work that was condemned?

A. We did take out the lobby floor on Building 2 and replace it.

R. D. Q. 348. What was the matter with it?

A. It was rough. The windows in the lobby of building 2 went clean to the floor and as the light passed across this tile floor, it made it look awful rough. It was condemned and we took it out and replaced it.

R. D. Q. 349. How many times?

A. Once, and we ordered new tile. The tile used in the lobby in Building No. 2 was not like any other tile; it was twelve by twelve quarry tile and that is the only place in the reservation it was used.

R. D. Q. 350. You only replaced it once?

A. Yes, sir. We removed the whole lot and replaced it.

R. D. Q. 351. You had occasion to replace some faulty work in Building No. 7. What was the occasion of that? The first building you started in.

A. That was replaced by Green Plastering Company; they paid for that. The quarry tile was set $\frac{3}{16}$ th of an inch above the cement floor to take care of the asphalt tile that went in the 1228 center, and when Green Plastering Company cleaned up the room, their laborers struck the end of our tile with their shovels and broke a lot of them. We replaced some and Green Plastering Company replaced some. Some had to be replaced in most of the buildings due largely to the chipping of the shovel as they cleaned the floor.

R. D. Q. 352. What was Mr. Knox doing?

A. Time keeper.

R. D. Q. 353. Did he assist you in any way as superintendent of the work?

A. Yes, sir. He had jurisdiction over mostly the laborers. That is what he looked over, superintended the bull gang, getting in the material and cement and sand, and I looked after the mechanics.

R. D. Q. 354. You were general foreman?

A. Yes, sir.

R. D. Q. 355. He was under you?

A. Yes, sir.

R. D. Q. 356. Is that quite ordinary for the timekeeper to do that sort of work?

A. Yes, sir; he does it on every job.

R. D. Q. 357. On one sheet he was listed as a mechanic. Do you know whether he is a tile setter or not?

A. No, sir; he didn't set any on this particular job.

R. D. Q. 358. Could he have been a mechanic?

1229 A. Yes, sir; he could have been.

R. D. Q. 359. Now, your company furnished all the tile for this job?

A. Yes, sir.

R. D. Q. 360. But did not furnish the soapstone and marble?

A. No, sir.

R. D. Q. 361. The general contractor furnished the soapstone and marble?

A. Furnished by Mr. Blair and set by us.

R. D. Q. 362. You did furnish the sand and cement to set the marble?

A. Yes, sir.

R. D. Q. 363. And the mortar?

A. Yes, sir.

R. D. Q. 364. On your direct testimony on page 509, you made a reference to the term laborer. In your testimony at Roanoke you used the term laborer in this statement: "After Mr. Dodd's ruling a mechanic and a helper was a unit and they worked together." That is your answer. "Q. Prior to his ruling?" and you answered "A mechanic, a helper, and a laborer." After Mr. Dodd's ruling that constituted a unit?

A. We called from then on a laborer working with a mechanic and not on the bull gang a helper.

R. D. Q. 365. Even though he only got 45 cents?

A. Yes; at that wage scale.

1230 R. D. Q. 366. He would be distinguished from an improver because he had no experience?

A. Yes.

(Here followed discussion off the record.)

By Mr. Doyle:

R. D. Q. 367. You know that these are the pay rolls for the week of September 28? I will ask you to identify them and have them marked for identification.

A. Yes, sir.

Mr. DOYLE. I ask that the pay rolls for the week of September 28 be marked for identification "Plaintiff's Exhibit No. 114," and "Plaintiff's Exhibit No. 115."

I ask that the pay roll for October 3 be marked "Plaintiff's Exhibit No. 116; October 5, No. 117; October 12, No. 118; October 12, No. 119; October 19, No. 120; October 18, No. 121; October 26, No. 122; October 26, No. 123; November 2, No. 124; November 2, No. 125; November 2, No. 126; November 8, No. 127; November 9, No. 128; November 16, No. 129; November 16, No. 130; November 23, No. 131; November 30, No. 132; December 7, No. 133; December 15, No. 134; December 21, No. 135; December 28, No. 136; and from January to February 15, No. 137."

That is all.

The COMMISSIONER. Better adjourn until 10 o'clock a. m.
(Thereupon, recess was taken in the hearing until 10:00 o'clock
a. m. Wednesday, March 20, 1940.)

1231

In the United States Court of Claims

No. 43548.

ALGERNON BLAIR, ET AL., PLAINTIFFS

vs.

THE UNITED STATES, DEFENDANT

WASHINGTON, D. C.,
Wednesday, March 20, 1940,
At 10:00 a. m.

TESTIMONY IN REBUTTAL (RESUMED)

The hearing was resumed, pursuant to the recess previously taken.

Present: (The same appearances as heretofore noted.)

FRANK M. GODBEY, introduced as a witness for the plaintiff in rebuttal, resumed the witness stand and was examined and testified as follows:

Re-cross examination by Mr. JULICHER:

R. X Q. 368. Mr. Godbey, what is the difference between a helper and an improver and an apprentice?

A. Not any.

R. X Q. 369. No difference at all?

A. In our trade; no, sir.

R. X Q. 370. Is a helper then just a beginner?

1232 A. He can be a beginner or can be a three-year man; depending on how long he has served at the trade.

R. X Q. 371. Then it is your opinion that a helper or an apprentice boy or an improver or a semiskilled laborer—would you include that?

A. Yes, sir.

R. X Q. 372. Are all the same? No difference?

A. No different to us; no, sir.

R. X Q. 373. They would probably all receive about the same rate of pay?

A. No, sir; it depends on how long they work at their trade. When they first start, they get a laborer's pay; as they serve more and learn more, they naturally make more.

R. X Q. 374. Then you attempt to comply with the rules of the International Bricklayers, Masons, Plasterers International Union of America, is that correct?

A. Yes, sir.

By the COMMISSIONER:

R. X Q. 375. That is the name of your national association affiliated with the American Federation of Labor?

A. Yes, sir.

By Mr. JULICHER:

R. X Q. 376. And the first year they get 40 per cent of the mechanic's wage?

1233 A. It depends on the locality; the further South you go, the less you make.

R. X Q. 377. Well, it does not appear that there is any provision for that in these rules and regulations covering the employment—

The COMMISSIONER. But the rules that you have before you, are they ironclad or do they provide for Locals to employ in certain districts of the United States and under certain conditions?

(Here followed discussion off the record.)

Mr. JULICHER. If Your Honor pleases, I think that the helpers' or apprentices' wages are based on the mechanic's wage, so if a mechanic is getting \$1.10, then the first-year learner or apprentice would get 40 per cent. If he was getting \$1.50 in some districts, it would be 40 per cent of that.

The COMMISSIONER. Is it your understanding that an apprentice can never get more than 40 per cent in any jurisdiction, regardless of the work?

Mr. JULICHER. According to the regulations, it sets up that the first-year learner, improver, or helper, or whatever he is called, gets 40 per cent; the second year, 60 per cent; the third year, 75 per cent.

The COMMISSIONER. Is that absolute or maximum?

1234 Mr. JULICHER. There does not seem to be any provision for anything else in this International rule pamphlet that I am looking at so I would like to ask Mr. Bodbey if he knows.

The WITNESS. That union book is for the bricklayers' union. We try to go by their by-laws wherever we can. The president of our union was working on the same job we were in Roanoke. Naturally, I don't think anything—he worked on this job all the way through and he later went to Kecoughtan and worked for Mr. Dodd. He was president of our Local at that time and

has been vice president since then. If he didn't complain, I didn't complain.

(Here followed discussion off the record.)

The WITNESS. At home we depend on how fast a man learns than how long. If he is a bright boy, he will learn more in one year than some other boy in two years. That would make him advance faster.

By Mr. JULICHER:

R. X Q. 378. Are you familiar with the constitution and by-laws of the Tile Layers, Marble Setters, Terrazzo Layers Local No. 1, Virginia?

A. No, sir.

R. X Q. 379. Where is Local No. 1?

A. I don't know; we have Local No. 7 in Roanoke.

R. X Q. 380. Local No. 7?

A. Yes.

1235 (Here followed discussion off the record.)

By Mr. JULICHER:

R. X Q. 381. At the time this work was performed at Roanoke, did you have your own local union then?

A. We were in with the bricklayers.

R. X Q. 382. You had your own Local No. 7 then or were you in this Richmond one?

A. No; we had Local No. 7. It has been in Roanoke for twelve years that I know of from personal contact.

R. X Q. 383. Twelve years?

A. Yes; it was not a new union; just formed at that time; it was an old union.

R. X Q. 384. Mr. Godbey, did I understand you to say that you were precluded from using any intermediate labor on this job?

A. Yes, sir.

R. X Q. 385. What was the date?

A. It was about two or three weeks after we started work on the Veterans Hospital.

R. X Q. 386. And after that no intermediate labor appears on your pay roll?

A. Only in connection with the terrazzo work, and we do rate our grinders at sixty cents an hour. None of that work had been done before. Nothing was said about terrazzo grinders.

1236 We turned them in as we had before at sixty cents an hour.

R. X Q. 387. After that you did not use any helpers, improvers, or apprentices at more than 45 cents an hour and less than \$1.10?

A. No, sir; we did not.

R. X Q. 388. Absolutely none on your pay roll?

A. None that I know of, and I was there every day.

R. X Q. 389. I think you said yesterday that the proportion of labor used was one, one, and one; that is, one mechanic, one improver, and one laborer; is that it?

A. That is the way Mr. Wilson had planned the job. We couldn't do it. That is what we speak of as a unit.

R. X Q. 390. Did you start off that way on this job?

A. No, sir; we did not. To begin with, things never run smoothly. There are too many things going on. The common labor overbalances skilled and semiskilled unless we had some way of telling what each man was doing at that time.

R. X Q. 391. Why didn't you have more improvers on this job the first week?

A. We hired them as they came along.

R. X Q. 392. You testified previously there were plenty of improvers around to be had?

A. There were; there still is.

1237 R. X Q. 393. And your pay rolls do not show but a single improver employed during the week of August 30, 1934?

A. We probably didn't have but the one. As I said those figures can vary. As you start on the first floor, you work a mechanic and improver without a laborer. The material is close at hand. As you move up in the building, the material is further away and harder to get to.

R. X Q. 394. Why do you require one laborer to every mechanic?

A. We require more than that sometimes. As you get up on the second and third floor of a building, he has to go down and get the mortar the mechanic uses.

R. X Q. 395. How much mortar does a mechanic use in a day?

A. It depends on what he is doing.

R. X Q. 396. Suppose he is able to lay 150 feet of tile in a day, or 200 feet, how much mortar would he use?

A. How much setting bed under the tile? That can vary from two to four inches.

R. X Q. 397. How much mason's mortar would he use?

A. He uses it—well, a man can set probably 100 feet of wall tile, he would use about one yard of mixing material.

R. X Q. 398. Not very much?

A. No.

R. X Q. 399. It is very little, isn't it?

1238 A. It has to be brought up in bags as fast as a man can use it.

R. X Q. 400. You say the common laborer will do that work?

A. In some instances. If the helper does not have time to bring the mortar up, the laborer will.

R. X Q. 401. Now, you say the helper soaks the tile, grades the tile, cuts the tile, and hands it to the mechanic to set. Is that the way it works?

A. Yes.

R. X Q. 402. I look at your pay roll of August 30, 1934, and I find you have eight helpers. Helpers are not common laborers, are they?

A. No, sir.

R. X Q. 403. But I see you are paying them only 45 cents an hour?

A. They probably just started. The first job they work on, they start at laborers' wages.

R. X Q. 404. Isn't it unusual to have eight helpers, all beginners? Not one of them had any previous experience?

A. No, sir; it is not unusual.

The COMMISSIONER. Does it show which floor they were working on that week?

Mr. JULICHER. No, sir. This is a report signed by Mr. Knox, the timekeeper, and it only gives a list of the men working and their jobs.

1239 By Mr. JULICHER:

R. X Q. 405. Did you ever have any second or third-year helpers on that job?

A. Yes; Mr. Hastings was one.

R. X Q. 406. Was he paid more than 45 cents?

A. Yes, sir; he was paid as much as 75 cents.

R. X Q. 407. When did he start working? Can you find his name in those record you put in yesterday?

A. Yes, sir.

R. X Q. 408. Will you do it, please?

Mr. JULICHER. Answering your question, Mr. Commissioner, they were probably working on the first floor at that time because it is at the forepart of the job, the very beginning of the job, as a matter of fact.

A. Mr. Hastings is listed here in the pay roll of September 7; Warren Hastings.

By Mr. JULICHER:

R. X Q. 409. Does it show how much he was getting?

A. Yes, sir; he was getting 60 cents an hour.

R. X Q. 410. Sixty cents an hour?

A. Yes.

R. X Q. 411. He is listed as a mechanic, isn't that true?

A. No, sir; that letter behind them indicates L, G, H, M.
R. X Q. 412. What do they mean?

1940 A. In some cases it means grinders and laborers.

R. X Q. 413. What would "M" stand for?

A. It could stand for mechanics; yes, sir. We have some here who are mechanics with an "M" behind them.

By Mr. DOYLE:

R. X Q. 414. Could it stand for mortar?

A. It could, yes, sir.

By Mr. JULICHER:

R. X Q. 415. Since you tell us it could, suppose you tell us what it does stand for. If any one should know, you should know.

A. Yes; I helped prepare them.

R. X Q. 416. What does that "M" stand for?

A. I couldn't tell you. We can look through some of the other pay rolls and see how he is listed on the others.

R. X Q. 417. Why would they put mortar on pay rolls?

A. Some of our jobs are distasteful to the men and they will try to do other jobs. We list on the pay roll what they are doing, so we can get them started on that.

(Here followed discussion off the record.)

By Mr. JULICHER:

R. X. Q. 418. Do you have your pay roll there for the week ending August 30, 1934?

A. Yes, sir.

R. X. Q. This man you speak of, Hastings, he is W. 1241 Hastings?

A. Yes; Warren Hastings.

R. X Q. 420. Do you know whether he was a mechanic during the week ending August 30, 1934?

A. No, sir.

R. X Q. 421. And paid a mechanic's wage?

A. I do know we tried to raise him to a mechanic on the job, but we had complaints from other men in the union and had to stop.

R. X Q. 422. The week ending August 30 was about the beginning of the work, wasn't it?

A. Close to it, yes; the second or third week.

R. X Q. 423. I show you a document here entitled, "Weekly Report," signed by R. L. Knox. It has also been notarized. And I ask you if you find Mr. Hastings' name on there?

A. Yes, sir; he is listed here.

R. X Q. 424. He is listed as a mechanic?

A. And making mechanic's wages too.

R. X Q. 425. He is listed as a mechanic too, isn't he?

Mr. DOYLE. Let's get the record straight. Are you testifying or the witness?

A. No, sir. The only way we have on the pay roll to tell what a man is doing is what he made.

By Mr. JULICHER:

R. X Q. 425. He was making \$1.10 an hour?

1242 A. He was making \$1.10 an hour on this pay roll.

R. X. Q. 427. On that list the weekly report, the letter "M" appears after his name, doesn't it?

A. Yes, sir; it does.

R. X Q. 428. And just below his name is the name of Cecil Marshall; isn't that so?

A. Yes.

R. X Q. 429. After his name are the letters "IMP," which would probably indicate improver; isn't that so?

A. Yes.

R. X Q. 430. Then previously you showed me the same Mr. Hastings was working for 75 cents an hour?

A. Yes, sir; you are right.

R. X Q. 430. Then previously you showed me the same Mr. Hastings was working for 75 cents an hour?

A. Yes, sir; you are right.

R. X Q. 431. And he was still a mechanic?

A. At 75 cents; no. If you were a mechanic, you got \$1.10.

R. X Q. 432. What was he?

A. He was an improver; an apprentice boy.

R. X Q. 433. An apprentice boy?

A. Yes; when the job started, he was an apprentice boy.

R. X Q. 434. When the job started, he was a mechanic according to that?

A. This is not our first pay roll.

R. X Q. 435. What is your first pay roll?

1243 A. The first one I have here is August 24.

R. X Q. 436. How many men are listed there?

A. Four men.

R. X Q. 437. Then this is the second week?

A. Yes, sir; the week ending August 30.

R. X Q. 438. Is Mr. Hastings listed on the first week?

A. No, sir.

R. X Q. 439. Can you look through those records that you have there and tell me how many second- and how many third-year helpers you had employed on the job?

The COMMISSIONER. As of what date?

Mr. JULICHER. Through the job.

A. I could if you give me time enough; yes, sir. I could go back through the records.

By Mr. JULICHER:

R. X Q. 440. You have those records in front of you there. Can you go through those records and tell me how many second- and third-year men you have?

A. On pay roll for September 7, 1934, we have two sixty-cent men; meaning they are improvers.

R. X Q. 441. That is Mr. Marshall and Mr. Collins?

A. Marshall and Hastings.

R. X Q. 442. Mr. Hastings went back from \$1.10 to 60 cents an hour; is that correct?

A. Yes, sir; he did.

1244 By the COMMISSIONER:

R. X Q. 443. He was demoted?

A. Yes, sir; which is not very unusual.

By Mr. JULICHER:

R. X Q. 444. Your good friend Pat Garlick, what was he?

A. What was he?

R. X Q. 445. Yes.

A. He has been a laborer and improver.

R. X Q. 446. What was he at the time? A first-year man, or second or third?

A. Yes, sir; he was just starting at that time as tile setter's helper.

R. X Q. 447. He was just in his first year?

A. I don't know whether he was in his first year or not; he had just started working for us.

R. X Q. 448. You would know whether he was a third-year man, wouldn't you?

A. No, sir; I don't think so. He just recently made a mechanic and is getting a mechanic's wages.

R. X Q. 449. Did he ever get more than 45 cents an hour on that Roanoke job?

A. I don't think so; no, sir.

R. X Q. 450. And all that time he was just a first-year helper, according to his pay at least?

1245 A. Yes, sir; and according to Mr. Dodd's ruling that kept him from advancing in pay.

R. X Q. 451. Mr. Dodd's ruling? What ruling was that?

A. That we couldn't have intermediate labor on the job.

R. X Q. 452. He told you that personally?

A. Yes, sir; he did.

R. X Q. 453. You were working for a subcontractor, weren't you?

A. Yes, sir; I was

R. X Q. 454. Would there be any advantage, do you know, in telling you, you were an employee of a subcontractor, when the Government did not recognize subcontractors?

A. As foreman of the tile setters and marble setters on the job, he had cause to tell me a whole lot of things.

R. X Q. 455. Did you take any orders from Government inspectors? Isn't your contract signed with the general contractor?

A. Yes, sir; you certainly do take orders from them.

By Mr. DOYLE:

R. X Q. 456. From the Government inspector?

A. Yes, sir; not only on that job but any Government job I ever worked on you did.

By Mr. JULICHER:

1246 R. X Q. 457. You say that you worked for Mr. Dodd on the Kecoughtan job?

A. Yes, sir; I did.

R. X Q. 458. How long did you work there?

A. I can't tell you exactly in weeks, but we worked until we finished the barracks. They were being remodeled, and the bakery building.

R. X Q. 459. Was it two weeks?

A. No, sir; it was longer than that because we got paid every two weeks.

R. X Q. 460. You worked the entire job?

A. Yes; the entire job.

R. X Q. 461. On that job did you have a helper and common laborer?

A. I took a helper down with me and the common laborer was a colored man hired down in Kecoughtan.

R. X Q. 462. Was he assigned to you?

A. The helper was.

R. X Q. 463. Was the laborer?

A. No; he was not.

R. X Q. 464. Then you don't know what the proportion was on that particular job?

A. No, sir; the laborers were not assigned all their time to the tile setters; they helped the other trades if they had time.

1247 R. X Q. 465. Do you know that other mechanics in other trades had helpers?

A. Nelson Garlick did.

R. X Q. 466. Was he a mechanic on that job?

A. Yes; there are two Garlicks, Nelson and Pat.

R. X Q. 467. Pat Garlick was your helper?

A. Yes; on this Kecoughtan job.

R. X Q. 468. Nelson Garlick had a helper?

A. Yes.

R. X Q. 469. Do you know his name?

A. Garland Lawrence.

R. X Q. 470. Any other mechanics?

A. Hugh Freeman.

R. X Q. 471. Did he have his helper?

A. Yes.

R. X Q. 472. Do you have any idea what they were paid?

A. Only from knowing when we started that my helper got 45 cents an hour.

R. X Q. 473. When Mr. Dodd made that ruling, with whom did you file a protest?

A. I didn't file any personally because my boss, Mr. Wilson, was there on the job, and it was up to him to file it.

R. X Q. 474. Do you know that he did?

1248 A. No, sir; I don't know that he ever filed a written protest, but I do know he complained about it a great deal.

R. X Q. 475. Now, this conference that you mentioned previously that you attended, that is right, isn't it, that you attended a conference?

A. It was not a conference; no, sir. Mr. Roberts, Mr. Wilson and I went to Mr. Dodd's office and were asking about this rule.

R. X Q. 476. Did you talk together in his office?

A. Yes; we did.

R. X Q. 477. Then for the immediate purposes, we will call it a conference. You were present at that conference?

A. Yes, sir.

R. X Q. 478. Do you recall what was said?

A. Not in exact words. I know Mr. Roberts and Mr. Wilson protested his ruling that we could not use any intermediate labor.

R. X Q. 479. You couldn't use any intermediate labor at all?

A. A man was either a mechanic or a laborer; there was no in-between stage.

R. X Q. 480. No helpers?

A. Not over 45 cents an hour.

(Here followed discussion off the record.)

By Mr. JULIHER:

R. X Q. 481. Did you say yesterday that you did set
1249 tile on this Roanoke job?

A. Yes sir; I did.

R. X Q. 482. Do you recall what you said on page 491 of your previous testimony? I will read it to you so as to refresh your recollection. You were asked by Mr. Doyle, "Were you doing actual foreman's work at that time?" and you said, "Yes, sir." Question, "Not setting tile yourself?" Answer, "No, sir; what we call the walking boss on the job." Is it true that you were a foreman all through the job or what part of the job?

A. Well, at the beginning of the job, there was no mechanic there but me, and naturally I worked. As the buildings progressed, we could hire more mechanics and I was promoted to \$44.00 a week.

R. X Q. 483. There were no other mechanics on the job?

A. The first week there was no mechanic there but me.

R. X Q. 484. You worked the second week as a mechanic?

A. I may have; I don't remember.

R. X Q. 485. Can you tell from your pay roll whether you did or not?

A. Yes, sir; the second week I worked with my tools, yes, sir; as a mechanic.

R. X Q. 486. Was Mr. Knox there at the time as timekeeper?

A. Yes, sir; Mr. Knox was there the week ending 1250 August 30.

R. X Q. 487. His name is not shown on the pay roll, is it?

A. Yes, sir; on the bottom of the page.

R. X Q. 488. As being on the pay roll and getting paid?

A. Yes, sir; the week ending August 30, he is at the bottom of the page.

R. X Q. 489. I show you this weekly report again, which is the certified pay roll. That bears Mr. Knox's signature, doesn't it?

A. Yes, sir.

R. X Q. 490. Do you see Mr. Knox's name on that pay roll?

A. No, sir; only his signature as a timekeeper.

Mr. JULICHER. I want to offer this in evidence.

Mr. DOYLE. Let me ask you where you got it.

Mr. JULICHER. From you people, your official pay roll for that time.

Mr. DOYLE. Is this the one Mr. Dodd was testifying from in his testimony?

Mr. JULICHER. I don't remember whether it was or not. I know that is an official record. It is notarized and bears the signature of Mr. Knox, who was the timekeeper for the Roanoke Marble and Granite Company.

By Mr. DOYLE:

R. X Q. 491. Mr. Godbey, do you recall it was required at the time to furnish the Government inspector copies of 1250 the weekly pay roll?

A. I didn't; they may have at the office, but at the job, we didn't; no, sir.

R. X Q. 492. And that would have been done by whom?

A. Mr. Wilson at the office.

R. X Q. 493. Where is Mr. Wilson now?

A. Mr. Wilson is dead.

R. X Q. 494. When did he die?

A. August 26, this year; last year, rather.

By Mr. JULICHER:

R. X Q. 495. 1939?

A. Yes.

By Mr. DOYLE:

R. X Q. 496. But you believe it was the custom to furnish Government inspectors copies at the time?

A. I don't know. We did furnish the superintendent on the job with the number of the men that were working but we didn't give any copy of our pay roll on the job.

Mr. DOYLE. If your Honor pleases, this is apparently taken from the Government files, apparently is a copy of our pay roll, which is furnished to the Government inspector in accordance with the practice.

The COMMISSIONER. Not current with the job? Subsequent?

Mr. DOYLE. No; currently with the job, but inasmuch 1252 as the Government inspectors were only interested in the skilled mechanics and the semiskilled mechanics and the common labor, there would not appear on this copy the time-keeper or office force or any other persons connected with the job, any other workmen. I have examined this, and it appears to be a typewritten copy of our original pay roll, which is in evidence, Exhibit No. 110, but on that original pay roll there is inserted at the foot of the page, "Knox, \$20.00" for that week. So with the understanding that this is taken from the Government inspector's files—is that from Dodd's files?

Mr. JULICHER. That is your file, given to the Government by the Roanoke Marble and Granite Company.

Mr. DOYLE. Where did you get it from?

Mr. JULICHER. You were supposed to submit it to the Government each week.

Mr. DOYLE. Where did you get it now?

Mr. JULICHER. From the Government files, submitted by you.

Mr. DOYLE. What part of the Government files?

Mr. JULICHER. What difference does that make?

The COMMISSIONER. Has there been any witness that has been on the stand that has identified this particular paper as to its origin?

Mr. DOYLE. No.

1253 The COMMISSIONER. In other words, if you are offering it in evidence, objection is being made. Let us make our record before we pass on it. There ought to be some evidence here to show the history of the paper by some person who purports to know. You say it came from their files, and they deny it.

Mr. JULICHER. You are denying it?

The COMMISSIONER. They do not admit it.

Mr. DOYLE. We do not admit it.

The COMMISSIONER. If you admit it, I am ready to rule on it.

Mr. JULICHER. My contention is, if Your Honor pleases, that this Weekly Report was filed with the Government inspector every week, and it was prepared by the Roanoke Marble and Granite Company. This report carries their letterhead.

The COMMISSIONER. Let us go along with what your statement should be instead of this. You know that the subcontractor was required to and did file weekly reports. Is this one that was filed with the Government at the time? Who is there that can say it was? Somebody had to get it. If there is no objection, I will admit it. On objection, you will have to connect it up.

Mr. DOYLE. That is all I want to know.

1254 Mr. JULICHER. This report has been notarized and carries the signature of Mr. Knox.

By Mr. JULICHER:

R. X Q. 497. Are you able to state that this is Mr. Knox's signature?

A. No, sir; I would not be able to.

Mr. JULICHER. I can still put it in. I can put Mr. Doid on the stand.

The COMMISSIONER. That is what I thought.

Mr. DOYLE. I will admit it came out of the Government files where it is—

The COMMISSIONER. Are you ready to admit the original came from your hands?

Mr. DOYLE. Yes, I will admit it came from our hands.

The COMMISSIONER. It may be admitted as "Defendant's Exhibit K-K."

(Said weekly report, dated August 30, 1934, so offered and received in evidence, was marked "Defendant's Exhibit K-K," and made a part of this record.)

The COMMISSIONER. We will take a five-minute recess.

(Thereupon, a five-minute recess was taken.)

The COMMISSIONER. You may proceed.

By Mr. JULICHER:

R. X Q. 498. I show you a document. Can you tell me what this is? Do you recognize it?

A. I never saw one before; no, sir.

1255 R. X Q. 499. You are a member of the union, your trade union, aren't you?

A. Yes, sir; I am a member of the B., M. & P. I. Union.

R. X Q. 500. As a foreman, would you have any information that might be sent out, circulars that might be sent out by the union?

A. No, sir.

R. X Q. 501. International Union?

A. No; it would go to the officers of the Union.

R. X Q. 502. Would you recognize the Union provision with reference to apprenticeship if you heard it?

A. No, sir; because it doesn't apply to us. We don't work under the same rules that the bricklayers do.

R. X Q. 503. Bricklayers, Masons—you are a mason?

A. No, sir; a tile setter and marble setter. That is the name of our union. We are just affiliated with the A. F. of L.

R. X Q. 504. What is the name of the executive board of your organization then?

A. We have a president, vice president—

R. X Q. 505. What do you call it? What is the international headquarters?

A. B., M. & P. I. Union.

1256 R. X Q. 506. And you are not governed by any of their rules and bylaws?

A. No, sir; because there are not enough tile and marble setters in Roanoke to form a union of their own, we wanted to be union men affiliated with the A. F. of L., and the only way was to go in with the bricklayers, masons, plasterers, stone men, and get enough men to form a union.

R. X Q. 507. Suppose there was a circular sent by the B., M. & P. I. U. of A.—

The COMMISSIONER. Let us translate that.

Mr. JULICHER. Bricklayers, Masons, Plasterers, International Union of America.

The COMMISSIONER. All right.

A. Yes, sir; if they sent out a circular to Roanoke, the bricklayers would be governed by it but not the tile setters or marble setters.

Mr. DOYLE. What is the materiality of this line of questions?

The COMMISSIONER. I assume the Government is trying to show whether or not he was subject to the International organization, and if he was, he would show what it was. I imagine from what this witness says they did not have enough tile men to form a union, so in order to get affiliated with the A. F. of L., they had to join a local union.

The WITNESS. Yes, sir; and it stands to reason that the same ruling that would apply to the bricklayers and 1257 cement finishers would not—Ours is a different trade.

The COMMISSIONER. Their national organization is a different one. They would rather have them together than not to have any union at all, but they will go in with these fellows and have a local organization, but it would not imply that each group was subjected to the national regulations of another group.

The WITNESS. Because primarily it is a bricklayers' union.

Mr. DOYLE. Let us assume there was some such regulation by the International Union: What is the relevancy and materiality to the issues in this case?

The COMMISSIONER. I can well imagine the Brick International might have some regulation that you folks did not live up to, if he wants to admit he was a union man under the regulations of the International organization.

Mr. DOYLE. Would it be material if not covered by the contract?

Mr. KILPATRICK. There is nothing in our contract requiring us to live up to these international regulations.

Mr. JULICHER. That is what the whole case is about.

Mr. KILPATRICK. As to whether we lived up to union regulations? Not that I know of. The Government has not charged us with not living up to union regulations.

Mr. JULICHER. The complaint is the Government would 1258 not allow the Roanoke Marble and Granite Company to work one apprentice with a mechanic.

The WITNESS. He would not allow a helper with a marble and tile setter.

Mr. JULICHER. If the tile setters are a subordinate union of the B., M. & P. I. U. of America, they probably would be subject to certain regulations with reference to apprenticeship,

which says that where five mechanics are employed, two apprentices may be employed too.

"To insure the required number of mechanics, it is agreed that each employer employing two or more journeymen may employ one apprentice, and that when an average of five mechanics are employed throughout the year by any one employer, he shall be entitled to two apprentices, with the maximum of three apprentices to any employer employing ten or more mechanics throughout the year."

Mr. KILPATRICK. Mr. Commissioner, if the Government is taking the position here that the ruling made by Mr. Dodd was not based on any contract provision but was based by him on an attempt to enforce the labor regulations of a union, to which our employees or subcontractors' employees belonged, we say that is a matter between the subcontractor and his union, and unless he can show something in the contract to show we were forced——

The COMMISSIONER. I think we all agree that this case 1259 will stand or fall on the contract. It seems to me this witness fails to bring his group of men under this international organization you seek to establish.

Mr. JULICHER. That is all I am trying to find out.

The COMMISSIONER. That is such a rational explanation of it, that that is what happened. They did not have enough to organize themselves and went into the other. Generally in small communities the bricklayers are controlling in numbers, relatively larger in numbers, and they run it.

Mr. JULICHER. When they address a circular to all subordinate unions, I wanted to find out whether they came in under it.

The COMMISSIONER. They are not a subordinate union; they are affiliated with the brick men in Roanoke.

Mr. JULICHER. If they are not a subordinate union——

By the **COMMISSIONER**:

R. X Q. 508. Are you a subordinate union?

A. I couldn't tell you; I don't know.

By **Mr. DOYLE**:

R. X Q. 509. What are you in the union for?

A. To better the working man's condition and raise wages, if possible.

Mr. JULICHER. They are affiliated at least; whether affiliation and subordinate are the same or not, I don't know.

1260 **The COMMISSIONER.** Affiliated with what?

Mr. JULICHER. Bricklayers' union. Whether they are also subordinate to it, I don't know.

By the COMMISSIONER:

R. X Q. 510. Are you subordinate to the bricklayers' union?

A. I would say, no, sir; because when they do send the circulars, they are for the bricklayers and not for the plasterers, cement finishers, tile settlers, and marble setters, and all of us others that are banded together.

Mr. JULICHER. Obviously this witness does not know. I guess we can find out if we are anxious on that.

The WITNESS. I don't know.

By Mr. DOYLE:

R. X Q. 511. You do know they do not enforce any such rules about your employment of helpers, don't you?

A. No; because the president of our union worked through that entire job.

R. X Q. 512. Who was he?

A. Nelson Garlick. No question was raised as to the number of improvers or how many we worked.

R. X Q. 513. Was there any question about the selection of them?

A. No, sir.

R. X Q. 514. You take them from the common labor or
1261 wherever you got them, I suppose?

A. Yes, sir.

By Mr. JULICHER:

R. X Q. 515. Did you say that you worked with Mr. Dodd at Phoebus, Virginia?

A. Kecoughtan, Virginia, the Old Soldiers' Home at Kecoughtan.

R. X Q. 516. Phoebus and Kecoughtan are the same or are they two different jobs or two different places?

A. The same job. We always spoke of it as the Old Soldiers—although we lived in Hampton and received our mail in Hampton, we always spoke of it as the Old Soldiers' Home at Kecoughtan.

By Mr. DOYLE:

R. X Q. 517. Is that near Phoebus?

A. Yes; the adjoining town.

By Mr. JULICHER:

R. X Q. 518. Do you know whether Mr. Hopkins and Mr. Marshall are members of the union?

A. No, sir; I don't know.

R. X Q. 519. Are they mechanics, do you know?

A. Yes, sir; they are now. I know because Mr. Marshall is still in Roanoke. Mr. Hastings is in Florida and Mr. Hopkins is in Florida.

Mr. JULICHER. That is all.

1262

Redirect examination by Mr. DOYLE:

R. X Q. 520. Mr. Godbey, what is the custom of making up pay rolls on the Veterans job? Where were they made up? In the office or on the job?

A. Pay roll on the job.

Mr. JULICHER. I object to that question. He stated before he didn't know; he said he didn't know.

The WITNESS. I helped make the pay rolls.

By Mr. JULICHER:

R. D. Q. 521. Helped whom?

A. Mr. Knox, the timekeeper, and I make them up together.

By Mr. DOYLE:

R. D. Q. 522. What was the custom? Where were they made up?

A. The pay rolls were made on the job.

R. D. Q. 523. And at the beginning of this job did Mr. Knox devote all his time to it?

A. No; at the start of the job he only devoted a part of his time until we had enough men to require a full timekeeper's time; then he worked all day on the job.

R. D. Q. 524. Yesterday you identified some pay rolls for me on this job. Included in those pay rolls do you recall whether or not there were any men that worked at the shop?

A. Yes, sir; there was.

1263

R. D. Q. 525. What do you mean by the shop?

A. We have a monumental business in Roanoke, and we work men out there as well as at the Veterans Hospital job.

R. D. Q. 526. Was any part of that work charged to the Veterans Hospital?

A. Yes, sir; our truck driver, whenever he was hauling to the Veterans Hospital.

R. D. Q. 527. Those pay rolls indicate that was charged to the job?

A. Yes; you will notice each man is designated.

R. D. Q. 528. What class of men were employed at the shop? Any improvers or apprentices?

A. Yes, sir; to stone cutters and different grades of apprentice boys learning stonecutting, and laborers, and truck drivers.

R. D. Q. 529. What pay did they receive?

A. I would say it ran from thirty to seventy cents an hour.

R. D. Q. 530. Do you have a man by the name of Peterson working in the shop?

A. Yes, sir; he is a marble polisher by trade.

R. D. Q. 531. Do you have a man by the name of Jones working at the shop?

A. Yes; Mr. W. D. Jones, who still works there.

1264 R. D. Q. 532. What class of work does he do?

A. He is a terrazzo grinder and general handyman at our intermediate scale wage.

R. D. Q. 533. On the job did you have any occasion to use Mr. Peterson on this Veterans Hospital job near the completion of it in January, 1935?

A. Yes, sir; there was some chip marble and we got Mr. Peterson up there to rub and polish before final inspection.

R. D. Q. 534. What rate of pay did he receive?

A. Sixty cents an hour.

R. D. Q. 535. He is here on the pay roll at that rate of pay?

A. Yes, sir.

R. D. Q. 536. Was he an improver?

A. No, a marble polisher.

R. D. Q. 537. Was he an apprentice?

A. No, sir.

R. D. Q. 538. He wasn't a tile setter?

A. No, sir.

R. D. Q. 539. He wouldn't be confused, therefore, with this so-called semiskilled or helper to tile setter?

A. Marble polisher, and that is what he made all the time.

R. D. Q. 540. Although he does appear on the pay roll at that sixty-cent rate?

1265 A. Yes, sir; that was his rate of pay.

R. D. Q. 541. Will you kindly refer to the pay rolls in evidence there, the first two or three weeks, the pay roll of the week ending September 7, examine that and tell me if any men are listed on there at 45 cents that you believe would qualify as improvers and experienced helpers at the 60-cent rate when the job was in production?

A. Yes, sir; there are some on here that have since become mechanics; they have gone on up and are now mechanics.

R. D. Q. 542. State who they are.

A. Emery Coffee, he is working for us now in Roanoke. George Meadows, he is working for Marsteller in Roanoke. Walter Jones, he is working for us in Roanoke. Dolfi, he is a mechanic in Florida.

R. D. Q. 543. How about this fellow, Garland Lawrence?

A. He is still helping Mr. Garlick in Newport News.

R. D. Q. 544. He has qualified as an improver?

A. Yes, sir; he is making an intermediate scale of wages, I couldn't say what.

R. D. Q. 545. How about Chocklett?

A. I don't know where he is. He disappeared after that job.

R. D. Q. 546. The week ending September 14, 1934, do you 1266 see any others that have qualified as mechanics or improvers?

A. Pat Garlick is now a mechanic.

R. D. Q. 547. He is listed at 45 cents?

A. Yes; he is the only additional man.

R. D. Q. 548. Mr. Godbey, at the time of this interview that you had, or conference you had, with Inspector Dodd with reference to this ruling on intermediate labor, did he make any reference to other intermediate labor on this job?

A. Yes, sir. He said there was no intermediate labor, meaning not only our trade but other trades there.

Mr. JULICHER. I object to that. I don't see how that is pertinent here, and I do not think this witness is qualified to state what was on the other jobs.

The WITNESS. I don't think Mr. Dodd was trying to discriminate against us. He just said there was no other intermediate labor.

By Mr. JULICHER:

R. D. Q. 549. Do you know that there was no other intermediate labor?

A. No, sir. I only know what concerned our company. We didn't use it.

By Mr. DOYLE:

R. D. Q. 550. That is what Mr. Dodd said at the time?

A. Yes, sir; he said in all trades.

R. D. Q. 551. On this particular job, the Algernon Blair job?

1267 A. Yes, sir.

By Mr. JULICHER:

R. D. Q. 552. You stated you did use sixty-cent labor on the grinders?

A. We did because there was no question about that.

R. D. Q. 553. That is intermediate?

A. No; a grinder is not an apprentice.

R. D. Q. 554. That is not 45 cents or \$1.10.

A. No; it isn't; it is just a grinder's rate of pay.

By Mr. DOYLE:

R. D. Q. 555. Just the same as you would pay a marble polisher 60 cents?

A. Yes, sir; that is all they make at any time.

R. D. Q. 556. A grinder is not rated as an improver or helper to a tile setter?

A. No, sir; he is not.

R. D. Q. 557. That is a job in itself?

A. A job in itself, grinding terrazzo.

R. D. Q. 558. On these terrazzo grinders, what did the Government Inspector rule with reference to their rate of pay in the beginning?

A. Yes, sir; he ruled they should get \$1.10.

R. D. Q. 559. As mechanics?

A. Yes; they were doing work that required \$1.10.

1268 R. D. Q. 560. That ruling was protested?

A. Yes, sir; very much, by Mr. Wilson.

R. D. Q. 561. And later on it was adjusted at the 60-cent rate?

A. I think it was. We made adjustments in a lot of the men's pay after that.

R. D. Q. 562. There are a lot of 45 cents as grinders.

A. Yes; we gave them half the difference between 45 and 60 for every hour they ground for us.

R. D. Q. 563. You testified you had Pat Garlick helping you at this job at Kecoughtan?

A. Yes, sir.

R. D. Q. 564. And he started in and was paid 45 cents an hour?

A. Yes, he did; 45 cents and a dollar was the scale.

R. D. Q. 565. Did he ever raise his pay?

A. Yes, sir; he got raised to 60 cents on that job.

R. D. Q. 566. As an improver?

A. I don't know what he was classed at. He did get 60 cents an hour.

R. D. Q. 567. At the time Mr. Dodd made this ruling, was Government Inspector Feltham there?

A. No, sir; I didn't see Captain Feltham when we went over to the office.

R. D. Q. 568. You have testified that you were interviewed on the job by Inspector Dodd with reference to the class of work you were doing?

1269 A. And Captain Feltham, too.

R. D. Q. 569. Both?

A. Yes, sir.

R. D. Q. 570. Did you ever see either of them or both have a notebook and make notes with reference to anything with respect to your conversation?

A. No, sir.

R. D. Q. 571. On this whole job?

A. No, sir; I don't remember seeing it.

R. D. Q. 572. Did they consult with you very often with reference to the work on this job?

A. Just whenever they saw us doing something wrong or something that would not pass inspection.

R. D. Q. 573. Who was the Green Plastering Company?

A. They were contractors for the plastering work on the Veterans' Hospital.

R. D. Q. 574. Subcontractors?

A. Yes, sir; subcontractors for the plastering work under Mr. Blair.

R. D. Q. 575. You testified they did some damage to some of your tile work in one or more buildings.

A. Yes; they did in all buildings where there was plaster and tile.

1270 R. D. Q. 576. Will you explain that?

A. The tile went in first.

R. D. Q. 577. Base and border tile?

A. Yes; and left above the floor three-sixteenths, which was the asphalt tile, to be laid later.

R. D. Q. 578. They were to lay that asphalt tile?

A. No. When Mr. Green's men hit this three-sixteenth projection with a shovel, they shipped it. Mr. Green came to us and hired the tile setters. We repaired some of it in the beginning and Green repaired some.

R. D. Q. 579. Whom do you know that Green hired?

A. George Gioviano. He went to work on Green Plastering Company's, on their pay roll.

R. D. Q. 580. On their pay roll?

A. Yes, sir; we didn't work for him.

R. D. Q. 581. Did Mr. Dodd ever have occasion to talk to you about that damaged work?

A. Only to say we had to take up the damaged tile; that is all.

R. D. Q. 582. Did Inspector Dodd know that was being replaced and repaired?

A. I imagine he did, because it was being replaced and repaired as we went along.

R. D. Q. 583. And the Green Plastering Company paid Gioviano's wages?

1271 A. The percentage they thought they had damaged—yes, sir—they repaired.

R. D. Q. 584. Did Mr. Roberts know anything about that?

A. Yes, sir; Mr. Roberts knew about it.

By Mr. JULICHER:

R. D. Q. 585. Is that reflected in any report you made?

A. Only where Giovanni would disappear off our pay roll and be gone so many weeks and come back on. If we could get Green Plastering Company's record—

R. D. Q. 586. There wasn't any other record?

A. None that I know of.

By Mr. DOYLE:

R. D. Q. 587. Mr. Godbey, some reference has been made to the weekly pay roll of August 30, eight laborers on there at 45 cents an hour. Will you kindly look those over and tell me, for the purpose of the record, if any of those 45-cent men were expected to qualify as improvers or helpers?

A. Yes, sir. That is the hope of every man first starting to work, to get to be a helper and eventually a mechanic.

R. D. Q. 588. Actually in that week of August 30, were you using any of those men as helpers to mechanics?

A. Yes, sir.

R. D. Q. 589. That is the custom of the trade.

A. Yes, sir.

1272 R. D. Q. 590. You start them in at the lowest rate of pay?

A. Yes, sir; always.

Mr. DOYLE. That is all.

Re-cross-examination by Mr. JULICHER:

R. X Q. 591. You know that the Labor Department made the ruling with reference to the 60-cent pay of the grinders, don't you?

A. No, sir. I don't know who made the ruling or where it came from.

R. X Q. 592. Did you say this man, this helper—Who was Garlick?

A. Pat Garlick?

R. X Q. 593. Nelson Garlick. Who was his helper?

A. Garland Lawrence.

R. X Q. 594. Did you say he had not qualified yet as a mechanic? That is what you said, isn't it, that he was still a helper?

A. I don't think he is.

R. X Q. 595. He has been at it quite a number of years?

A. Quite a number. His name is on here.

R. X Q. 596. The names of the shop workers not actually on the Hospital job, do they appear on the pay roll?

A. Yes, sir.

R. X Q. 597. Is that according to custom?

1273 A. Yes, sir. If we had a truck driver, he would be paid and charged to the job he was working on. We would mark it "Veterans' Hospital" or wherever they were working.

R. X Q. 598. Did the names of the clerks in the office appear on this pay roll?

A. Not on this particular one, although they do have one.

R. X Q. 599. Was that submitted to the Government too, if you know?

A. Not that I know of.

R. X Q. 600. The marble that was used on the job came to the job polished, didn't it?

A. Yes, sir; it did.

R. X Q. 601. You didn't have any use for a marble polished on the job, did you?

A. Only where you repaired the chipped marble. They might strike it with a wheelbarrow.

R. X Q. 602. This quarry tile that was used in the lobby, did you say it was twelve by twelve?

A. Twelve by twelve red quarry tile.

R. X Q. 603. You couldn't be mistaken about that, sir?

A. I don't think so. It was the only tile of that size that was used on the reservation.

R. X Q. 604. Have you seen that tile recently?

A. No, sir; I have not been up there in the last year or so.

1274 R. X Q. 605. Were you permitted to install marble that was chipped or broken in any way?

A. No, sir. When it was installed, it was supposed to be whole and sound.

R. X Q. 606. Perfect, in other words?

A. Yes, sir. A lot of it got scratched and chipped after it was installed, before the building was completed.

R. X Q. 607. You say that this marble polisher got 60 cents an hour?

A. Yes, sir.

R. X Q. 608. He was a mechanic, was he not?

A. No, sir; it is not a mechanical job.

R. X Q. 609. Polishing marble is not a mechanical job?

A. No, sir. That was his scale of pay when he worked in our shop before and after the Veterans' Hospital. He has always made 60 cents an hour.

R. X Q. 610. Then you did not pay any attention to the contract which states a skilled mechanic gets \$1.10?

By Mr. DOYLE:

R. X Q. 611. Was he a skilled mechanic?

A. No, sir; it is not classed as a trade.

By Mr. JULICHER:

R. X Q. 612. Did you say the quarry tile was all twelve by twelve?

1275 A. The whole lobby of Building No. 2 was a larger tile than used anywhere on the reservation. I remember that it was large quarry tile, because the larger the tile, the more it is warped. We tried to use that, and that is the reason for the floor being rough, but we had to take it out after that. I remember that.

By Mr. DOYLE:

R. X Q. 613. Did you replace it with the same size tile or different?

A. The same thing that came out.

R. X Q. 614. The same size?

A. Yes. The largest size tile used, except in the lobby of Building No. 2, was six by six. Whether it was nine by nine, twelve by twelve, eighteen by eighteen, I forget the exact size, but I remember it was larger than what was used anywhere else in the reservation.

Mr. JULICHER. That is all.

Redirect examination by Mr. DOYLE:

R. D. Q. 615. Mr. Godbey, you identified this pay roll yesterday. I will show you those that you have testified on which appears some workmen at the shop. One particularly, the week ending September 28, 1934, identified as Plaintiff's Exhibit No. 115—in the left-hand column there is marked "shop," under the word "job," and in the second column the names of several men; which one of those would be charged against this Veterans' Hospital job, if any?

1276 A. This one name at the end of the list is Veterans' Hospital.

R. D. Q. 616. C. P. Bolling?

A. Yes, sir.

R. D. Q. 617. And the rate of pay is thirty cents?

A. That is our truck driver and still works for the company now.

R. D. Q. 618. The next one, the week ending October 12, identified as plaintiff's Exhibit No. 118—which one of those shop employees was charged against the Veterans' Hospital?

A. Two; C. P. Bolling and J. Jordan.

R. D. Q. 619. What were they?

A. C. P. Bolling is a truck driver, and Jim Jordan is a colored boy that worked out there for us.

R. D. Q. 620. On the week ending October 18, identified as Plaintiffs' Exhibit No. 121; Bolling appears on that?

A. Yes, sir; he was our truck driver.

R. D. Q. 621. As a charge against the hospital. The week of October 26, identified as Plaintiff's Exhibit No. 123, you have several shop employees there charged against the Veterans' Hospital?

A. Yes, sir.

R. D. Q. 622. One is at sixty cents an hour?

A. Peterson; marble polisher.

R. D. Q. 623. About whom you have previously testified?

A. Yes.

1277 R. D. Q. 624. And in the week ending November 2, Plaintiff's Exhibit No. 126, the same thing?

A. Yes, sir; the same thing.

R. D. Q. 625. The week of November 8, identified as Plaintiff's Exhibit No. 127, there is a man there charged to the Veterans' Hospital. What was he?

A. W. D. Jones, whom we talked about awhile ago. He is a terrazzo grinder at 60 cents. He repairs and terrazzo machines.

R. D. Q. 626. The week ending January 11, identified as Plaintiff's Exhibit No. 137, appears on the pay roll of Veterans' Hospital job, by the name of Peterson, at sixty cents an hour. Is that the marble polished to whom you referred?

A. Yes, sir; that is the marble polished to whom I was referring.

R. D. Q. 627. He also appears on pay roll of the week ending January 18; is that the same one?

A. Yes, sir; he was the marble polished.

R. D. Q. 628. These other shop employees were not charged, as I understand it, against the Veterans' Hospital job?

A. No; it is designated on the pay roll as to which job it is charged to, Veterans' Hospital or shop.

1278 Mr. JULICHER. At this time, Your Honor, I would like to offer the report of Mr. Dodd on the claim of the Roanoke Marble & Granite Company, that the Court granted permission to do at the time of the last hearing.

The COMMISSIONER. What number will it be?

Mr. JULICHER. It will be H-H.

The COMMISSIONER. Subject to verification, it will be admitted and marked "Defendant's Exhibit H-H."

(Said report of Mr. Dodd, so offered and received in evidence, was marked "Defendant's Ex. H-H" and made a part of this record.)

Mr. JULICHER. At this time, Your Honor, I would like to offer the stipulation of facts, which is the report of the special agent, L. J. Rauber. Mr. Kilpatrick has agreed to the stipulation of this report into evidence.

Mr. KILPATRICK. Under the conditions named in the stipulation. We do not admit the truth of the statement, but we do not deny this report as having been made.

The COMMISSIONER. This stipulation, together with the two reports, will be filed and marked "Defendant's Exhibit F-F and G-G."

(Said stipulation and two reports, so offered and received in evidence, were marked "Defendant's Ex. F-F and G-G," respectively, and made a part of this record.)

1279-1280 PIERCE ALLEN PRATT, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined and, in answer to interrogatories, testified as follows:

By the COMMISSIONER:

Q. 1. Give us your full name.

A. Pierce Allen Pratt.

Q. 2. How old are you?

A. Thirty-two.

Q. 3. You live where?

A. I live at Birmingham, Alabama.

Q. 4. Your occupation?

A. Special Agent of the Federal Bureau of Investigation.

Q. 6. Mr. Pratt, did you have occasion to go down to Montgomery, Alabama, to examine the books and records of Algernon Blair?

A. Yes, sir.

Q. 7. Relative to the claim made in this Court by Algernon Blair?

A. Yes, sir.

Q. 8. How long ago did you make this investigation?

A. This investigation was made on May 6 through the 9th, and the 13th through the 15th of 1940.

Q. 9. Did you find any differences or discrepancies in your investigation?

A. Yes, sir.

Q. 10. Directing your attention to the first-named item of the plaintiff's claim as set out in the petition, \$50,416.12—

The COMMISSIONER. Page what?

Mr. JULICHER. Page 7.

By Mr. JULICHER:

Q. 11. (Continued.) Has that figure been changed, do you know?

A. Yes, sir.

1281 Q. 12. What is it now?

A. Well, that has not been calculated by me in that manner.

Q. 13. What is the amount of the claim as set forth in Plaintiff's Exhibit No. 49?

A. \$51,256.92.

Mr. KILPATRICK. Did you say Plaintiff's Exhibit No. 49, Mr. Julicher?

Mr. JULICHER. No; I am sorry; there is a series of exhibits running from No. 45-a to No. 49.

The COMMISSIONER. That is \$51,256.92, which takes the place of \$50,416.12?

Mr. JULICHER. Yes.

By Mr. JULICHER:

Q. 14. Now, directing your attention to the first subitem under this amount, it reads, "Roanoke Field Office Overhead for three and one-half months of alleged delay." Did you investigate that item?

A. Yes, sir.

Q. 15. And what did you find?

A. I found that this item is made up of several items.

By the COMMISSIONER:

Q. 16. Now, you are referring to the item on the printed page 7, No. 1, \$9,226.80?

A. Yes, sir. That has been changed by Plaintiff's Exhibit No. 45-a to the figure of \$11,348.90.

The COMMISSIONER. All right.

1282 The WITNESS. That is comprised of several items, which are: salaries, overhead salaries for three and one-half months, \$8,317.50; telephone service, excluding long-distance calls, three and one-half months, at \$12.00, \$42.00; field office expense, including lighting, heating, and so forth, three and one-half months, at \$35.00, \$122.50; four sets monthly progress photographs, at \$56.10, total \$224.40; and rental value or depreciation on equipment, tools, automobiles, and so forth, three and one-half months, at \$755.00, total \$2,642.50, making the total claim on this item, \$11,348.90.

Now, then, in answer to your question, I did examine this item of the claim and found that the salary item, as I have previously mentioned, is correct, based on a three and a half months' period. I find the telephone service charge, totalling \$42.00, is correct, based on a three and a half months' period. With reference to the field office expense, including lighting and heating, I found

that the \$122.50 item was also correct, based on the three and a half months' computation. With reference to the four sets of monthly progress photographs, totalling \$224.40, in examining this item, I found a credit that the plaintiff had not given consideration to in the claim, which credit amounts to \$4.50.

I discussed this matter with Mr. Clarke, of the Algernon Blair Company, and Mr. Clarke agreed to the correction of this item.

Mr. KILPATRICK. We will so stipulate on the record.

Mr. JULICHER. That is in agreement, then, the \$4.50 minus in that item?

1283 Mr. KILPATRICK. Yes.

The WITNESS. Now, then, taking up the next item, rental value or depreciation of equipment, tools, automobiles, et cetera, totalling \$2,642.50, the plaintiff had no records supporting this item at all. This item was not supported in any way on the books and records of the plaintiff, and I had no way of telling the value of this equipment at the time that it was placed on the job; the salvage value, if any, if salvaged during the life of the contract, and in that way I was not able to arrive at any reasonable depreciation for any of the equipment, tools, or automobiles charged on this item.

I discussed this matter with Mr. Clarke, and Mr. Clarke advised me that this item, the total of this item—that is, \$2,642.50—had been arrived at by a reasonable rental value estimated by some of his workmen and himself.

By Mr. JULICHER:

Q. 17. Now, with reference to these other items, did you find complete records to support these others, the preceding items?

A. I found records supporting the salaries claim of \$8,317.50; that is, I found the individuals set out here were actually employed by the plaintiff.

Q. 18. At that time?

A. At this time.

Q. 19. And on this job, were you able to tell?

1284 A. And on this job; yes, sir. I also determined that the telephone service charge, based on a three and a half months' period, was correct, and the field office expenses, and we have already discussed the monthly progress photographs.

Q. 20. Now, passing to the next item, the Montgomery office overhead; did you investigate that?

The COMMISSIONER. By the next item, you mean Item 2, on Page 7?

Mr. JULICHER. Yes. Well, Your Honor, there might be a little bit of difficulty if we tried to follow the Petition, because the Petition is not set out as clearly—the items are not set out as clearly

in the Petition as in the exhibit. I will try to refer to the Petition if you think I should. I think I can make it all right. Under the first main heading I can follow the Petition.

The COMMISSIONER. You are now going to consider the overhead expense items for three and a half months?

Mr. JULICHER. For the Montgomery office; yes.

The WITNESS. With reference to the plaintiff's claim, the Montgomery office overhead, as shown by these exhibits 46-a, then the total amount of \$18,093.52, I find that the information and figures set out here to a certain point on this exhibit to be correct. That is, plaintiff here makes a computation of the payments earned on the Roanoke job throughout its life, and also the payments earned on the other jobs throughout the contract period of the Roanoke job. Totalling them, and also totalling his expenses and 1285 salaries of the Montgomery office, he arrived at a percentage figuring that the total earnings on the Roanoke job were 5.1421 percent of the total earnings, and that the proper amount of overhead chargeable to the Roanoke job amounted to \$63,167.03. Now, from this point on, plaintiff's figure of \$45,073.51, which he states would have been the amount of overhead under ordinary condition, is an estimate, of course, and I cannot—I have nothing to verify that by.

By the COMMISSIONER:

Q. 21. That estimate is based on the theory that it is completed in ten months?

A. Yes, sir.

By Mr. JULICHER:

Q. 22. Is this item based on a three and a half months' period?

A. No; it is not.

Q. 23. Would it be any different if it had been?

Mr. KILPATRICK. May I ask what item you are speaking of?

Mr. JULICHER. \$18,093.52.

A. Yes; there would be a difference.

By Mr. JULICHER:

Q. 24. What is it based on, if not the three and a half months' period?

A. Well, sir, if you will take the total amount of \$63,167.03, which the plaintiff states is the proper amount of overhead chargeable to the Roanoke job, and divide that by thirteen and a half months, you will arrive at a figure of \$4,679.00. Multiply 1286 that by three and a half months, and you will arrive at a figure of \$16,376.50, instead of \$18,093.52.

Q. 25. That is based on ten months' earnings on the Roanoke job?

A. That is based on the thirteen and a half months of the life of the job, dividing that into what the plaintiff has calculated here as the proper amount of overhead chargeable to the job and then multiplying the figure by three and a half months.

By the COMMISSIONER:

Q. 26. If you multiply by three and a half months, it covers the three and a half months' period, does it not?

A. Yes, sir.

Q. 27. All right. Are you a Certified Public Accountant?

A. No, sir.

Q. 28. Do you have a degree?

A. Yes, sir.

Q. 29. Where?

A. The University of Alabama.

By Mr. JULICHER:

Q. 30. Passing now to the next item, Item 3 of Page 7 of the Petition, extra liability and compensation insurance on alleged excess labor pay roll, \$5,237.16; did you check that item?

A. Yes, sir.

Q. 31. What did you find?

A. With reference to this item, which is Plaintiff's Exhibit 47-a, the plaintiff in his exhibit states he paid out for liability and compensation insurance, \$13,053.24. In arriving at his claim on this item, he takes his estimated labor figure of \$247,556.73, and multiplies that by 3.39 percent, arriving at a figure which he states would have been the insurance charges under ordinary circumstances. Well, regarding this, of course, this claim, I have no way of knowing definitely what the labor charges would have been under ordinary circumstances, the plaintiff's figure of \$247,556.73, being an estimated figure.

Q. 32. And there is nothing in the record?

A. There is nothing in the record to show, of course, what plaintiff would have expended on this job.

By the COMMISSIONER:

Q. 33. Plaintiff refers, in Exhibit No. 47-a, to that figure, and says it is estimated labor. In other words, that is what he said?

A. That is right. In other words, I have no way of knowing how long the job would have taken.

By Mr. JULICHER:

Q. 34. Were you able to check the rate?

A. I was able to check the rate, and the rate that the plaintiff uses here is correct.

By the COMMISSIONER:

Q. 35. 3.39 percent?

A. 3.39 percent, and the labor cost set forth, that is correct.

By Mr. KILPATRICK:

Q. 36. How about the insurance cost? He paid more than 1288 that, did he not?

A. \$15,053.24, that is the note. There were some refunds by the insurance company.

Mr. KILPATRICK. Excuse me for interrupting. I thought we might clear that up now.

The COMMISSIONER. I think under those circumstances it is well to interrupt, in order to save time.

By Mr. JULICHER:

Q. 37. Passing to the next item, Page 7 in the Petition, Item 4, extra heating cost due to alleged delay and extension in winter months, \$4,021.32. Did you investigate that item?

A. Yes, sir.

Q. 38. What did you find?

A. I found that the expenditure set forth by the plaintiff in his exhibit No. 48 was correct, with the exception of a credit of \$2.90 that the plaintiff had not given the Government credit for on the claim.

Q. 39. What was that for?

A. That was the sale of one stove that was not reflected on Plaintiff's Exhibit No. 48.

Mr. KILPATRICK. We agree that our exhibit No. 48 overstates the cost of the heating by the amount of \$2.90.

By Mr. JULICHER:

Q. The next item—

The COMMISSIONER. Covering the delay in approving heating plant, \$290.89.

1289

By Mr. JULICHER:

Q. 42. (Continued.) What did this item actually cover?

A. Temporary heat. It covers the purchase by the plaintiff of stoves, hauling charges on coke, purchase of coke, and several thermometers, together with some labor cost, which Mr. Clarke advised me was paid to individuals, firing and setting up these stoves.

Q. 44. Is that the total of that item, or just three and one-half months?

A. That is just for three and a half months.

Q. 45. Just for three and a half months?

A. Yes, sir.

Q. 46. Does it show which three and a half months?

A. Yes, sir. There are for October, November—There are two pay roll charges here in October, and the balance of the charges occurred during November, December, January, and February.

Q. 47. Were you able to find any similar items in previous months?

A. Yes.

Q. 48. And these are aside from those other items?

A. Yes, sir.

Q. 49. Now, the next item on Page 7 of the Petition; extra expense incurred in the field resulting from delay in approval of heating plant, \$290.89; did you investigate that item?

A. Yes. I found the plaintiff had paid that sum out.

1290 Q. 50. Did it show the purpose?

A. I think it does, for the moving of machinery.

Q. 51. That amount was paid to someone to move the machinery, is that the way it is?

A. Yes, sir.

Q. 52. The next item, Item 6, Page 7 of the Petition, extra cost of grading and walks, \$13,336.36; did you investigate that item?

A. Yes, sir.

Q. 53. What did you find?

A. The next item is the plaintiff's extra cost of excavation, due to performance in cold weather, his Exhibit No. 49.

Q. 54. Item 6, then, is made up of two parts?

A. Yes, sir.

1291 Q. 55. One part is \$9,036.59, and what was that for?

A. That was for excavation.

Q. 56. And then there was \$3,698.32. What was that for?

A. That was for increased cost on road, walks, and curbs.

Q. 57. Coming back to the first one, \$9,036.59, will you state your analysis?

The COMMISSIONER. That is Plaintiff's Exhibit No. 49?

Mr. JULICHER. Exhibit No. 49, Page 1.

A. With reference to this exhibit, plaintiff sets out the amount of dirt moved during the months of excavation.

By Mr. JULICHER:

Q. 58. That runs all the way through the job, doesn't it, right from January to February?

A. I said "the months of excavation," because I have no definite information as to when the—I don't know right this moment whether the plaintiff had the opportunity to do any excavation during December or not. That is why I said, "during the months of excavation."

Q. 59. You mean December 1933, don't you?

A. Yes, sir. He also sets forth the cubic yards, the cost per cubic yard per month, an accumulated cost per cubic yard to date,

the cost each month and the total cost to date. Now, then, with reference to the cost of each month actually incurred by the plaintiff in excavation, I found the amount set forth by the plaintiff in his claim was correct; however, I note that in arriving at his claim he has taken the cost incurred through May.

1292 *found the amount set forth by the plaintiff in his claim was correct, however, I note that in arriving at his claim he has taken the cost incurred through May.*

Q. 60. Through May 1933?

A. 1934.

Q. 61. How many cubic yards did he excavate during May?

A. During May he moved 20,751 cubic yards.

Q. 62. Do the records show that amount that you have just read off?

A. The monthly reports of the plaintiff, as I recall, set forth the amount of yards.

Q. 63. Was that amount in here the peak of his production during any one month?

A. This was the peak; April and May.

Q. 64. The peak months?

A. Yes, sir. Now, then, I would like to say that plaintiff takes the cost, as I said a moment ago, that he incurred through May, which amounted to \$20,084.83, and then based on this high peak of production which quite naturally would lower the unit cost, and he uses that as an average and states that from this period on, he had 78,088 yards to move, and he states that he could have moved the remaining number of those yards, that is, 78,088 yards, at this low unit cost of twenty-two cents, though I know, of course, through my accounting practice, with increased production the unit costs, naturally, go down.

1293 Q. 65. You said "Average." Do you mean to use that as a unit price?

A. He took those two months, that is, April and May, when he had his peak production of 21,193 yards and 20,751 yards, respectively, and figured his unit cost on these two months for the remainder of the period, although the record reflects that he had high unit cost during January and high unit cost during the month of July, in the summer; further, that in September and October, November, December, January, and February, he had unit costs somewhat exceeding the unit costs for April and May, and I do not believe that this would be a proper method. In other words, some months would naturally be better than others, and I do not believe that anyone can expect a high production throughout the contract period. Naturally, sometime you are going to have fine grading, and your production is going to drop.

Mr. KILPATRICK. If Your Honor pleases, I do not believe this witness has been qualified in the field of construction engineering, and I do not think he can tell us those things and give us an opinion on this job.

The WITNESS. May I state it this way?

The COMMISSIONER. I think he has been qualified in his field.

The WITNESS. When production drops down, that is when the number of yards that can be moved or are moved during the month drops down, the unit costs are increased.

1294 Mr. KILPATRICK. We will all agree on that.

By Mr. JULICHER:

Q. 66. Then, according to your findings, this item, or part of this item, is based on an estimate; is that true?

A. Yes, sir.

Q. 67. And the estimate uses the unit price of about twenty-two cents per cubic yard for moving material?

A. That is correct.

Q. 68. Do you find anything else, other than the total cost in the record, the monthly total cost?

A. No, sir.

Q. 69. Now, the next part of that item, of that claim, is \$3,698.32. Will you tell us what you found when you investigated that item? First, what is it for?

A. In connection with this item, the examination of the records reflects that the plaintiff actually incurred costs of \$13,930.00. From this figure he takes the sum of \$10,359.67, which is an estimated figure, and arrives at a difference of \$3,571.23, adding some incidental cost, totaling the claim as previously stated, to \$3,698.32. I have no way of determining what the actual cost would have been under ordinary circumstances, and cannot verify the difference of \$3,571.23.

Q. 70. That is based on plaintiff's estimate, in other words?

A. Yes, sir.

1295 Q. 71. Now, passing to the next main item of the plaintiff's claim, Page 9 of the Petition, \$26,032.96, this is the claim of extra cost of building additional outside scaffolding and laying of brick. Did you investigate that item?

A. Yes, sir.

Q. 72. How did you divide it?

A. I broke this down according to Plaintiff's Exhibit No. 50, and checked the amounts that he sets forth in the two pages of this exhibit.

Q. 73. What was the first item of this main item?

A. The first item here is \$10,613.80, which plaintiff claims as extra cost of exterior scaffolding.

Q. 74. What did you find there?

A. Well, plaintiff, in arriving at his claim on this item, first, from the progress photographs, made an estimate of the total amount of lumber that went into each one of the buildings, that is, the total amount. I do not mean lumber that went into the buildings, the lumber that went into the scaffolding around the buildings. There are no records in plaintiff's records to reflect the amount of lumber used in the scaffolding, or the amount of lumber that went to the building.

1296 Q. 75. Is there anything in the record to indicate whether or not the plaintiff made a claim at that time for the extra lumber used to build the scaffolding?

A. No, sir. The plaintiff, as I stated before, estimated the amount of lumber he used in the scaffolding for each one of the buildings, then he took off a figure of twenty-five percent of this lumber which could be used twice, as seventy-five percent of it was only actually placed on the scaffold at any one time, and figures, therefore, he would only have had to purchase seventy-five percent of the total quantity of lumber, amounting to 336,096 feet, seventy-five percent of this being 252,000 feet, which he states could have been purchased at an average cost of \$25.00 per thousand board feet.

Mr. Clarke and I sat down and examined all of the invoices for the type lumber used in the preparation of scaffolding, and arrived at a figure of an average cost of \$22.94, plus \$1.00 hauling charges from the railroad siding to the site.

Q. 76. You say you and Mr. Clarke found those records?

A. Yes, sir. I asked Mr. Clarke for all of the invoices, and we examined them together, and I made a list of all the lumber on the invoice as to the type of lumber used in the scaffolding
1297 and forms, concrete forms. They used the same type of lumber.

Q. 77. They were not segregated?

A. No, sir. They were not segregated as to form lumber or any other lumber of the same type used in other parts of the project.

Q. 78. It would not be shown, would it, whether or not the plaintiff used form lumber or used the form lumber afterwards for scaffolding?

A. No, sir.

Q. 79. There is no indication of any credit. Would that be the way it would be shown, if it were shown?

A. It would not be shown on the records; it would merely be shown as the total lumber purchased.

Q. 80. In other words, there was no segregation between form lumber and scaffold lumber which was the same type?

A. That is correct.

Q. 81. Now, you found a difference, didn't you, here, in the average cost of this lumber?

A. Yes, sir. As I have stated, Mr. Clark apparently had previously arrived at a unit cost per thousand feet of \$25.00, but examination of the invoices reflected a unit price of \$23.94.

Q. 82. Which made a difference of how much?

A. Well, in the final computation, it made a difference of \$146.92. Now, I might add that in the claim, he states labor costs for erecting 336,000 board feet of lumber for these scaffolds of \$18.00 per thousand, and he also—

1298 Q. 83. Pardon me. You have gone on to the next item, have you not?

A. No, sir.

Q. 84. Is this all under this \$10,000.00?

A. Yes, sir.

Q. 85. For erecting the scaffolding you are talking about?

A. Yes, sir; and he also states that the costs for tearing down this scaffolding would have been at a rate of \$8.00 per thousand.

Q. 86. Is that actually shown in the records what the cost was?

A. No, sir. That is just estimated.

Q. 87. That is just an estimate?

A. Yes, sir.

Q. 88. Although the work was actually done?

The COMMISSIONER. Otherwise it would still be up there, wouldn't it?

A. Yes, sir; I imagine so.

By Mr. JULICHER:

Q. 89. The work was done but the records do not show. This is just an estimate?

A. Yes, sir.

Q. 90. Will you continue to that next part of this item?

A. The next part of this item is plaintiff's claim for the extra cost of laying bricks from the outside.

Q. 91. How much was that?

A. The total amount of the claim for laying these bricks was \$12,990.00.

1299 Q. 92. Now, is there anything in the records to show how that figure was arrived at?

A. No; there is nothing in the records to show how that figure was arrived at. Plaintiff states that they bought 1,299,000 bricks,

and figures that it cost them \$10.00 more per thousand to lay these bricks by the overhand method than by the inside method, and I have no way of stating that—

Q. 93. You state it costs them \$10.00 more to lay these bricks from the outside than from the inside, but that does not include the scaffolding?

A. No.

Q. 94. That is just the cost of laying the brick?

A. Yes, sir.

By the COMMISSIONER:

Q. 95. You had no means of checking that?

A. No, sir.

By Mr. JULICHER:

Q. 96. Was there anything to show that work was actually done?

A. By the overhand method?

Q. 97. Yes.

A. No, sir.

Q. 98. Going to the next item, Page 11 of the Petition, extra labor cost for carpentry work—

Mr. KILPATRICK. Mr. Julicher, before you leave Exhibit No. 50, I believe Mr. Pratt said that due to that change in the labor 1300 cost under our method of computing this, this claim would be about \$146.00 less?

Mr. JULICHER. Yes.

Mr. KILPATRICK. We will stipulate that our claim be reduced in that amount on that item, Plaintiff's Exhibit No. 50.

The COMMISSIONER. Very well. We are now taking the item of \$30,451.01 that appears on Page 11 of the Petition?

Mr. JULICHER. That is right.

By Mr. JULICHER:

Q. 99. Did you check this item, Mr. Pratt?

A. Yes, sir.

Q. 100. What did you find?

A. Well, in connection with this claim here, the plaintiff had prepared a schedule which reflects the estimated number of hours for the form work for concrete, of 72,281 $\frac{3}{4}$ hours; installation of millwork, 16,795 $\frac{3}{4}$; temporary buildings, 533 $\frac{1}{4}$ hours; sheathing and subflooring, 3,723 hours; framing and other miscellaneous items, 13,201 $\frac{3}{4}$ hours; a total of 106,535 $\frac{1}{2}$ hours.

Q. 101. These are carpenter hours you are speaking about?

A. I am speaking of carpenter hours. This is an estimate on the part of the plaintiff. The records of the plaintiff reflect on the daily reports the number of carpenter hours work and the wages paid, indicating \$1.10 per hour. On the daily re-

1301 port there is also reflected the total labor cost per carpenter as to millwork, framing and miscellaneous carpentry. temporary building and form work, and that amount contains not only the skilled labor costs but also common labor, and there was no way of determining definitely, as far as I was concerned, what—

Q. 102. Do you know whether it included—

The WITNESS. The number of skilled carpentry work for each one of the different items, as I have previously outlined. Now, then, from this point on, plaintiff in his claim states that he had been permitted to use not less than three semiskilled workers with one skilled worker, and their experience was that such a crew could turn out approximately ninety per cent of such work of four skilled workers, they further said four skilled workers were paid \$4.40, one skilled worker at \$1.10 and three semiskilled workers at fifty-five cents per hour would draw a total of \$2.75 an hour. They would have to work one-ninth longer than the crew of four skilled workers to accomplish the same work, so that their pay would be a total of \$3.05½ for the same work performed by the four skilled workers for \$4.40.

Plaintiff further states for every \$4.40 on this type of labor, he, therefore, lost \$1.34½, or 30.57 per cent of the total amount paid out. He states that he spent \$80,096.50 on forms and temporary buildings, and that 30.57 per cent of this would be \$24,485.50, for which part he makes his claim. Now, then—

Q. 102. Let me interrupt here. Then the plaintiff is
1302 claiming 30.57 per cent on the entire number of carpenter hours, or the value of them?

A. The value of them; yes, sir. Just a moment. On this item here, I am reading from form work and temporary buildings, he takes the two estimated labor hours and he multiplies that figure by \$1.10, arriving at \$80,096.50. Then he applies this estimated percentage. Now, I have no way of knowing as to how much a skilled man can do as compared to a semiskilled. Therefore, I cannot make any statement.

Q. 103. You cannot say it is one-ninth, as the plaintiff states?

A. No, sir.

Q. 104. One-ninth more work?

A. He states they would have to work one-ninth longer.

Q. 105. This is assuming, of course, that the plaintiff used three semiskilled workers to one skilled worker; is that correct?

A. Yes, sir.

By the COMMISSIONER:

Q. 106. Three semiskilled to one, or three semiskilled with one equals ninety percent of what four will do?

A. Three semiskilled with one skilled.

By Mr. JULICHER:

Q. 107. Does the record show just how the carpenter labor was distributed around the job?

1303 A. The record shows the money value of the labor, or the carpenter labor, yes; distributed to the different items of the job, but it includes common labor as well as skilled.

Q. 108. For instance, would it show so many carpenters at work on form lumber or at work building forms, rather, or would that be just one lump sum which includes the carpenter labor or the labor in connection with the carpenter work and the helpers and the skilled workers, themselves?

A. It shows so many carpenters at so much per hour. It shows so many laborers at so much per hour.

By the COMMISSIONER:

Q. 109. That would show the segregation between skilled and unskilled, wouldn't it; the price given? That would segregate them, wouldn't it?

A. I have here—

Q. 110. In giving the price, that in itself would segregate it between the skilled and unskilled, would it not?

A. Yes, sir. That segregates it there; yes, sir.

By Mr. JULICHER:

Q. 111. Does it show they were working on form or mill work?

A. No, sir.

By Mr. KILPATRICK:

Q. 112. Doesn't that daily report show they were?

A. Here, I have one right here. This is the daily report of the plaintiff. It happens to be July 7, 1934. Now, this
1304 record shows carpenters, seventy-seven carpenters, 462½ hours at \$1.10, total, \$508.75. Now, then, where that is distributed over here I don't know. It shows down here.

By Mr. JULICHER:

Q. 114. That is on the same page?

A. Yes. It shows carpenters' labor here for framing and for millwork.

By Mr. KILPATRICK:

Q. 115. By buildings, does it now?

A. Yes, sir. But the total of those two figures here amounts to \$214.03.

By the COMMISSIONER:

Q. 116. It is segregated by buildings there?

A. Yes.

Q. 117. When you say \$1.10, that segregates as to quality?

A. It segregates over here as to carpenters, but on this side I have no segregation of \$578.75. In other words, I don't know where all those carpenters worked. In other words, there is also some other work on here, and I have just mentioned that figure of \$578.75 is not totally taken up by the figure I have just added up here, two hundred and some dollars.

By Mr. KILPATRICK:

Q. 118. That report covers two pages?

A. I see it does, but still there is no distribution on this 1305 other side [indicating].

Q. 119. Could you reconcile these daily reports with the pay roll?

A. Yes, sir.

By Mr. JULICHER:

Q. 120. And show the distribution as shown on Plaintiff's Exhibit No. 51?

A. Not and show the distribution as shown by the plaintiff. As I stated, the figures on the work sheet here, which is also the same as on the exhibit, the hours calculated there are an estimate.

Q. 121. Does your explanation relative to the impossibility of form work distribution apply to the other items as well?

A. Yes, sir.

Q. 122. Now, going to the next item in the first paragraph, on Page 13 of the Petition, excess costs of reinforcing steel labor, \$8,827.05. Did you investigate that item?

A. Yes.

Q. 123. What did you find?

A. I found that the work of installing this steel did actually cost the plaintiff \$17,149.65, but that the other figure was an estimated one. That is the amount they estimated it should have cost them. It was an estimated figure, and I could not verify that.

Q. 124. Does the record show any indication that that claim had been prepared at the time this loss was suffered?

A. No, sir.

1306 Q. 125. Does the record show whether or not this work was subcontracted or done by the plaintiff himself?

A. No; this work was not subcontracted.

Q. 126. Going to the next item, as shown at the end of the first paragraph, on Page 14 of the Petition, extra costs of salaries and expenses of M. G. Andrews and W. M. Ellingsworth, required at Roanoke, Virginia, to assist in settling differences between government inspectors and plaintiff's superintendent of construction, \$5,890.70. Did you investigate that item?

A. Yes, sir.

Q. 127. And what did you find?

A. I found that the items as set forth by plaintiff had been—

By the COMMISSIONER:

Q. 128. In Exhibit No. 53?

A. Yes, sir; had been incurred by the plaintiff.

By Mr. JULICHER:

Q. 129. Did you find whether or not that expense had been included in the first item?

A. Yes. I attempted to determine that and it was not.

Q. 130. This is a separate item?

A. Yes, sir.

Q. 131. Does the record show what these men were doing?

A. No, sir.

Q. 132. Does the record show when they were at Roanoke?

A. The records do not show the times they were at Roanoke; no.

1307 Q. 133. It does not show what they were doing at Roanoke, either?

A. No, sir.

By the COMMISSIONER:

Q. 134. According to plaintiff's Exhibit No. 53, they are asking \$4,900.50. Is that right?

A. I believe there is an adjustment on that. I believed that plaintiff has inserted another item in there.

Mr. KILPATRICK. Exhibit No. 53—a was put in.

The COMMISSIONER. All right.

By Mr. JULICHER:

Q. 135. Does the record show what the traveling expenses were for?

A. I have my work sheet here. In some instances, yes; and others, no; because it just shows traveling expenses to certain individuals charged in the records. In other cases, it does not. In other cases, it shows travels to be from Montgomery, Alabama, to Roanoke.

Q. 136. It doesn't show the purpose though, does it?

A. No, sir.

Q. 137. Does the record show what Mr. C. W. Roberts did up there?

A. The records show that Mr. C. W. Roberts was general superintendent.

Q. 138. He was general superintendent?

A. Yes, sir.

Q. 139. Who was immediately under him? Is that shown?

A. There is shown here an individual, F. E. Durden, superintendent, and J. E. Lacey, engineer, J. T. Roberts, superintendent, and Mr. W. G. Ireland, superintendent, and Mr. T. E. Devinney, office manager, and other lesser employees.

By Mr. KILPATRICK:

Q. 140. Do you mind telling us what that is you are reading from?

A. I am now reading information from Plaintiff's Exhibit No. 45-a, which I also examined in the books and records of the company.

By Mr. JULICHER:

Q. 141. That Exhibit No. 45-a carries the salaries of those various men, doesn't it?

A. Yes, sir.

Q. 142. They were all up there on that job, apparently, from the records?

A. Plaintiff makes claim for these individual salaries in overhead salaries in his Exhibit No. 45-a; yes, sir. That is correct.

Q. 143. Have you any way of knowing that Mr. Andrews and Mr. Ellingsworth ordinarily did in Montgomery?

A. I was only advised as to what their work was by Mr. Clarke, and he stated that Andrews and Ellingsworth were sent up here to rectify some differences that occurred between the plaintiff and the defendant.

Q. 144. What did they do at Montgomery; do you know that?

A. Both of them in Montgomery are—I don't exactly know the nature of the work. They are in the office at Montgomery.
1309 Mr. Andrews has since left the employ of the plaintiff's company.

In connection with this matter, I might state that I talked to Mr. Andrews. I believe I have information in here. I would like—I talked to Mr. Andrews. I do not find my notes on that right this minute, and I asked him whether he had ever come to Washington on any other matters. I beg your pardon. I mean Mr. Ellingsworth, and Mr. Ellingsworth stated that he had come to Washington on one occasion to take up some other matters not pertaining to this Roanoke job. That was during the period of the Roanoke job; and for which traveling expenses are included under this item.

By the COMMISSIONER:

Q. 145. Did he say the traveling expenses on the trip not connected with this job were included?

A. Well, of course, Mr. Ellingsworth did not know the amount, I don't imagine, that was set out in the claim, but he stated he had come up to Washington on another matter.

Q. 146. I understand that. Did he say that is included in any of these items here plaintiff seeks to recover for? In other words, couldn't he have made a trip that is included in this claim?

A. Yes, sir; he could have.

Q. 147. Do you know whether the one he is talking about is included?

A. I do not.

By Mr. JULICHER:

Q. 148. Did Mr. Ellingsworth ever say what he was doing in Roanoke?

1310 A. Yes. He was at Roanoke settling differences between the Government and the plaintiff.

Q. 149. He didn't say what date that was?

Q. 150. Did he say what date that was?

A. I am trying to find my notes. He did state it was during this period, because he came from Roanoke on this job.

Q. 151. Did he verify any of those dates?

A. I only examined the expense account to see what was included in the exhibit. I couldn't tell when he left Roanoke to come up here.

Q. 152. Do you know whether all of Mr. Ellingsworth's expenses were shown in the books of the plaintiff's company?

The COMMISSIONER. You mean expenses in connection with this job or otherwise?

Mr. JULICHER. In connection with this job.

By the COMMISSIONER:

Q. 153. Do you know whether all his expenses in connection with this job were shown on the books?

A. Mr. Ellingsworth submitted—I believe they were submitted weekly—expense accounts, to the main office, which, in turn, of course, were paid by the main office. Whether all of his expenses while at Roanoke were included in that report made to the main office, I do not know. I would not state.

1311 By Mr. JULICHER:

Q. 154. Well, were you able to discover whether all the expenses claimed by Mr. Ellingsworth were included in the Plaintiff's Exhibit No. 53?

A. Yes, sir.

Q. 155. Well, then, if he did make a trip up to Washington for purposes other than adjusting differences between the Government inspectors and the plaintiff—would that be shown in the records?

A. No, sir.

Q. 156. Would it be shown in the records if he made a trip to Washington for the purposes of this job and did other work besides, while here?

A. No, sir.

Q. 157. The next item of this claim—

By Mr. KILPATRICK:

Q. 158. Didn't you see expense accounts where the expense of the trip would be charged partly to Roanoke and partly to another job; didn't Mr. Clarke show you that?

A. Yes; Mr. Clarke did show me that.

By Mr. JULICHER:

Q. 159. The first paragraph of page 17 of the Petition, the claim of excess costs of sandstone required by the contractor to be secured locally, whereas commercial types were not available, \$14,147.54. Did you examine this item of the claim?

A. Yes, sir; I did examine this item of the claim, and this 1312 has been substituted by Plaintiff's Exhibit No. 54-a.

Q. 160. Which makes it what?

A. \$15,180.52; and in connection with this, I verified the costs incurred by the plaintiff on this, and found them to be correct. However, plaintiff, in arriving at the amount claimed, uses an estimated figure.

Q. 161. How is it applied?

A. Well, he has an estimate there which he computes and deducts, that he figures what would have normally been the cost; what he would have normally incurred, and deducts that figure from the costs actually incurred, and claims the difference.

Q. 162. Does the record show whether or not the contractor made any preparation for obtaining this stone in and around Roanoke?

A. No, sir.

Q. 163. Does the record show whether or not the plaintiff prepared the claim at the time the damage was incurred?

A. No, sir.

Q. 164. How many subcontractors are shown under the Blair Company on this job?

A. There are nineteen subcontractors reflected as having worked on the job, with the total amount of their work being \$420,473.35.

Q. 165. About thirty-three percent of the total work?

A. Yes, sir.

Q. 166. Is there anything in the records showing whether
1313 or not any of these subcontractors were paid anything extra
for damages there incurred?

A. No, sir.

Q. 167. Is there anything in the records to show they made any
claims?

A. No, sir.

Q. 168. Aside from the Roanoke Marble and Granite Company?

A. The Roanoke Marble and Granite Company; yes.

Mr. JULICHER. That is all.

Cross-examination by Mr. KILPATRICK:

X Q. 169. Mr. Pratt, when you have referred here in numerous
exhibits, to the fact that you discovered figures there which are
merely estimates, you do not mean to indicate that any of the
figures which we represent in the exhibits as being actual book
records turned out to be estimates, do you? Aren't they all figures
which our witnesses said were estimates?

A. I think I stated on several occasions throughout this hear-
ing that some of the figures—in other words, in plaintiff's claim,
almost throughout, he takes what he actually did incur and de-
ducts from that what he estimated. On a number of these occa-
sions the figure which he deducts is an estimated figure. For in-
stance, if you will recall that excavation item, he says there the
cost that he had incurred up to a certain point in his ex-
1314 cavation, then he turns around and uses his unit cost of
twenty-two cents and estimates that he would have been
able to do all the rest of the excavating at that figure.

By the COMMISSIONER:

X Q. 170. What should he have done if he had wanted to make
a claim?

A. Well, the proper method would be to take the average unit
cost, I believe.

By Mr. KILPATRICK:

X Q. 171. The question I am getting at is this, Mr. Pratt: You
did not find in any of these exhibits that the plaintiff has repre-
sented something to be an actual expenditure, and when you went
to the books you found no such record, and that was an estimate
is that right?

A. With the exception of the carpentry, form work, where the
plaintiff stated they had actually spent \$80,000.00 for that.
1315 That figure there was based on an estimate, because the
\$80,000.00 is arrived at, of course, by multiplying so many
carpenter hours at \$1.10 per hour.

X Q. 172. However, your records there were made up from the daily reports of Mr. Clarke, of which you have a photostatic copy, and it shows, among other things, total carpenter hours under the contract?

A. That is right.

X Q. 173. And the total amount paid for those carpenter hours?

A. That is right.

X Q. 174. That is the actual record?

A. That is right.

X Q. 175. It is the apportionment of those hours and those wages between formwork, millwork, framework, and temporary buildings that you say is his estimate?

A. The parts are an estimate and the whole is an actual.

X Q. 176. Do you think there could be any more scientific way of determining the skilled carpenter expense of formwork, for example, than the method the plaintiff has used?

A. I think the records could have been kept in a better fashion, showing the actual skilled number of hours applicable to these items.

X Q. 177. Since it did not, do you think this is a reasonable method of allocation?

A. I think this is reasonable.

By the COMMISSIONER:

X Q. 178. If, when he started out, he was not anticipating
1316 a law suit, he didn't do that?

A. Well—

X Q. 179. At the same time, it turns out it would have been advisable if he had?

A. Yes.

By Mr. KILPATRICK:

X Q. 180. Do you have Exhibit No. 46—a there: the Montgomery office overhead?

A. Yes, sir.

X Q. 181. If you assume the validity of the theory on which this estimate was made by Mr. Clarke, in the preparation of this exhibit, there is nothing wrong with his mathematics and book records in that, is there?

A. Well, I believe in connection with this item I testified it could just as well have been figured as I figured it.

X Q. 182. You have a different way of estimating than he? That is the only difference between you on that exhibit; isn't that right?

A. Yes, sir.

X Q. 183. Now, Exhibit No. 47—a, in connection with the liability insurance, you found that the amount we claimed to have paid

was at least as much as shown in there, didn't you; the liability and compensation insurance?

A. The insurance rate; the amount paid was correct.

X Q. 184. Didn't you find we paid a little more than that, as a matter of fact, a hundred dollars or so?

1317 A. The records reflect that the plaintiff actually spent \$13,392.87. I think that is that difference you are speaking of.

X Q. 185. So our Exhibit No. 47—a understates the actual expense by the difference between those two figures?

A. Yes, sir.

X Q. 186. On that same exhibit, the figure which is referred to as labor costs on the job, \$385,654.91, that is the labor costs of the job as shown by our books, is it not?

A. No; the correct labor cost on that was \$382,513.40.

X Q. 187. That would not affect the amount of this particular item because it was on a percentage?

A. That is right.

X Q. 188. You stated, in connection with the excavation costs, Exhibit No. 49, that we had used the average costs for April and May in estimating what it would cost to excavate the balance of the job, I believe. As a matter of fact, we took a little more, didn't we, than the average, for those months? Wasn't the average 21¼ cents and we took 22 cents?

A. Yes, it was 21¼ cents and you took 22 cents, a difference of three-quarters of a cent.

X Q. 189. You don't know whether, under other conditions, the plaintiff could have completed the rest of that excavation remaining at the end of May during the succeeding four months, do you?

1318 A. No; I do not, because—

By the COMMISSIONER:

X Q. 190. You do not specialize in that?

A. No.

By Mr. KILPATRICK:

X Q. 191. Now, if you will look at Exhibit No. 50, the extra costs of building the exterior scaffolding, I believe you stated that the estimate of lumber used in the building scaffold was made up from examination of the progress photographs, wasn't it? Wasn't it also based upon examination of the detail plans for the job?

A. Well, yes. I don't know whether it was or not. That is just my conversation with Mr. Clark.

X Q. 192. You checked with Mr. Clarke, did you not, the invoices for temporary lumber, that is the type of lumber used for forms and scaffolds on this job?

A. Yes, sir.

X Q. 193. You testified, I believe, that there was nothing to designate whether it was to be used for scaffolds on the one hand and forms on the other?

A. That is right.

X Q. 194. But there was an invoice referring back to the order number so you would know it was the same type of lumber, rough lumber?

1319 A. Rough lumber was used for forms and scaffolds.

X Q. 195. On the same exhibit, 1,299,000 brick were purchased and used on this job. That is an actual matter of record as to what we actually paid?

A. There were 542 bricks more.

X Q. 196. 542 bricks more than 1,299,000?

A. Yes.

X Q. 197. Now, if you will look at Exhibit No. 51—

A. What is that, sir?

X Q. 198. That has to do with additional carpentry work?

A. Yes, sir.

X Q. 199. You have stated that a great many estimates are involved in that computation. However, the first tabulation at the top of the page is, total hours worked, 106,000 odd hours, is a matter of record, isn't it?

A. Yes, sir.

X Q. 200. And the fact that Mr. Blair paid \$1.10 per hour for that labor?

A. Yes, sir.

X Q. 201. Now, if you will turn to Exhibit No. 52, which has to do with the reinforcing steel, didn't you examine the estimate on which the bid was based to see whether that was the actual cost estimated for bidding on this job?

A. Yes, sir.

X Q. 202. And you found it was estimated on this basis?

A. That is the estimated figure.

1320 X Q. 203. I believe you found we had overstated our claim a little on that reinforcing steel?

A. Yes, sir.

X Q. 204. You found we had estimated 842 tons instead of 825?

A. You had estimated 825, rather than 842.

X Q. 205. Do you know how much that reduces that item?

A. \$170.00.

Mr. KILPATRICK. We will stipulate that the claim covered by Exhibit No. 52 will be reduced in that amount.

By Mr. KILPATRICK:

X Q. 206. Now, if you will turn to the last exhibit you discussed, Exhibit No. 54-a, I think it is with reference to the stone work?

A. All right.

X Q. 207. Did you find that the Crab Orchard Stone Company had quoted Mr. Blair a price of four dollars a ton, f. o. b. quarry, as set out in that exhibit, didn't you?

A. Yes, sir.

X Q. 208. And you spoke of our not having paid anything to subcontractors. I think you probably overlooked the payment to the Virginia Bridge Company of two hundred and some dollars?

A. That was the item that was brought out.

Mr. JULICHER. That is in the claim here. I touched on that, if you will recall.

1321 Redirect examination by Mr. JULICHER:

R. D. Q. 209. Do the records show whether or not the plaintiff was forced to remove any faulty concrete?

A. I do not recall that the records show that. However, I had a conversation with Mr. Clarke, and Mr. Clarke advised me that they had removed certain portions of concrete and that they had also been required to await the inspector before they would allow them to pour the concrete.

R. D. Q. 210. Do you recall the method plaintiff used relative to the handling and charging of equipment on the job?

A. Yes, sir. That equipment was based on an estimated figure, estimated rental cost, in other words.

R. D. Q. 211. Did they keep an equipment account?

A. No, sir.

R. D. Q. 212. How was it charged?

A. Well, the equipment that goes to this job, perhaps, is shipped from Florida, or wherever the plaintiff was previously doing work, or from Texas, and the only cost that this job bears, as far as equipment is concerned, are the freight costs. There is no record set up by the plaintiff as to what the actual cost of this piece of equipment or that piece of equipment was to the job.

1322 R. D. Q. 213. Is any rental for equipment charged in this claim, if you know?

A. No, sir; not in the records. I talked to Mr.—their head bookkeeper, I don't recall his name.

R. D. Q. 214. Mr. Ott?

A. Mr. Ott, and he stated the records were really inadequate, so far as equipment costs were concerned, and I believe Mr. Clarke admitted in my presence that they were, so far as keeping up with the cost of equipment on the job.

By Mr. KILPATRICK:

R. D. Q. 215. When you refer to records, or the records, you are referring to Mr. Blair's bookkeeping records, are you not?

A. Yes, sir.

R. D. Q. 216. You are not referring to the numerous items of correspondence put in evidence in this case between Mr. Blair and the Veterans' Administration, are you?

A. No, sir.

By Mr. JULICHER:

R. D. Q. 217. Referring to Plaintiff's Exhibit No. 46-a, Mr. Kilpatrick asked you about the—I think he asked you something about the difference between the method of computation that is here and the one you would use?

A. Yes, sir.

R. D. Q. 218. You base yours on a three and a half-months' 1323 period?

A. I based mine on a three and a half months' period.

R. D. Q. 219. Did I understand you to say there wasn't any difference?

A. No; I said there was a difference.

Mr. KILPATRICK. He gave the figures.

By Mr. JULICHER:

R. D. Q. 220. Then the difference is as against \$18,093.52 and the \$16,376.50, the way you figured it?

A. Yes, sir.

R. D. Q. 221. That is on a straight three and a half months' basis?

A. Yes, sir.

(Witness excused.)

EDWARD J. ARMBRUSTER, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined, and, in answer to interrogatories, testified as follows:

By Mr. JULICHER:

Q. 6. Mr. Armbruster, did you have occasion to go down to Roanoke and investigate the claim of the Roanoke Marble and Granite Company?

A. Yes, sir; I did.

Q. 7. When did you make that investigation?

A. I began on February 23 and I was there off and on to March 3, about a week or so.

Q. 8. What did you find relative particularly to the records?

1324 A. Well, I had with me the petition in this case, and I went down there to see if I could check the figures the plaintiff had in that computation, and all that I could find, after a great deal of search, and after making inquiries, all I could find, were the pay rolls, the sheets which showed the names of the mechanics, laborers, or the names of the workmen for each day for each week. That is all I found, just the pay rolls.

By the COMMISSIONER:

Q. 9. No daily reports?

A. No daily reports, no progress reports, no records to show what these men were doing, how much work they were performing, or whether they were working on one particular building or another building, just had the plain pay rolls.

By Mr. JULICHER:

Q. 10. Did you find any records showing the amount of defective work taken out and replaced?

A. No. I did ask for that and I was not able to get anything. I did spend a lot of time down there to see if I could in any way find out how the plaintiff figured his claim. As you know, Mr. Wilson, who was in charge of the company, died a few years ago, and the present officers were not with the company at the time the claim was made, and while they were very cooperative and courteous, they just were not able to give me any more help than
1325 we were able to get from the records, and they were very incomplete.

Q. 11. I hand you a document and ask you what it is.

A. I prepared this. It shows the total pay roll of the Roanoke Marble and Granite Company for the Veterans' Bureau job at Roanoke. That is, it shows the pay roll totals for each week, beginning with the week ending August 24, 1934, and ending with February 15, 1935. Then I have shown under the caption of mechanics at \$1.10, meaning per hour, the number of men that were working, the number of hours they worked, and the total amount they earned that week, and under the next caption of laborers, I have shown the number of men that worked that week, and the same information with respect to the helpers at fifty-five cents. There was just one week they were employed, as helpers at sixty cents, only one week.

Q. 12. That was the first part of the job?

A. The first week. There were no helpers at sixty cents. The second, third, and fourth weeks they did employ some helpers, at sixty cents. In the second to the last column, timekeepers, there was employed a timekeeper at \$20.00 a week, and after the first four weeks he was increased to \$25.00. Then, the last column shows the total amount of the pay roll by weeks, and again totalled for the job.

Q. 13. Does it show any laborers employed at less than forty-five cents an hour?

1326 A. Yes; it does, in the column marked laborers at thirty cents an hour, total number of hours 400½, and the total \$120.15.

Mr. JULICHER. I now offer this in evidence.

By Mr. DOYLE:

Q. 14. Mr. Armbruster, from what records did you prepare this schedule?

A. I prepared those from the plaintiff's pay rolls, and at the time I prepared this schedule from the pay rolls, they were not in evidence. I understand they have since been put in evidence, and they may have been given some exhibit number.

Q. 15. Did you prepare this with any schedules or exhibits previously offered in evidence in this case?

A. Not this, no; I have not. Did you have reference to some particular exhibit?

Q. 16. Particularly Exhibit No. 86. This appears to be a duplication of Plaintiff's Exhibit No. 86, except the total labor cost in Exhibit No. 86 is \$18,615.44, and you have \$18,651.40. I want to know what the difference is.

A. I haven't seen Exhibit No. 86. If I may see it, I can tell. I made this up independently, however, of any exhibits. If the exhibit you refer to is less in amount, it may be due to some adjustment. There were some adjustments made for errors and other things.

The COMMISSIONER. Subject to verification, it may be admitted and marked "Defendant's Exhibit L-L."

1327 (Said schedule, so offered and received in evidence, was marked "Defendant's Exhibit L-L" and made a part of this record.)

By Mr. JULICHER:

Q. 17. I hand you another document and ask you what that shows?

A. This is a statement that I prepared, captioned "Statement of Comparative Excess Costs." I have shown on the top of this schedule—

By the COMMISSIONER:

Q. 18. First, you divided into classes?

A. Mechanics and common laborers shown on this schedule; the mechanics section shows what the actual pay roll was according to the book records, \$9,308.65. I might say specifically, the mathematical extension of 8,465 hours at \$1.10 is \$9,311.50. However, in the pay roll there were certain errors, and the actual amount paid is \$9,308.65. The hours are correct.

Then, in the estimate prepared by the contractor, Exhibit No. 64, he has set out what he anticipates is the cost of mechanics labor is going to be, that is, there is shown there 4,165 hours at \$1.10, and that is carried out as \$4,580.40. He also anticipated 4,165 hours of helpers at sixty cents, which would make a total of \$2,498.40. The two items aggregate \$7,078.80.

By Mr. JULICHER:

Q. 19. Before you go any further, did you find anything in the records, the estimate, to indicate that the Roanoke Marble and Granite Company planned to pay any helpers more than sixty cents an hour?

A. I didn't find anything.

1328 Q. 20. No estimate at sixty-five, seventy, or seventy-five cents an hour?

A. No.

By Mr. DOYLE:

Q. 21. What do you mean, "estimate"?

A. I found no estimate of what they were going to pay their men.

By Mr. JULICHER:

Q. 22. You found an estimate?

A. I found an estimate in Exhibit No. 64, which is an estimate of what they were going to pay their mechanics and helpers, but I found no helpers, but I found no estimate of what they were going to pay mechanics or helpers.

By Mr. DOYLE:

Q. 23. You found no record in the books or records?

A. Not that I recall. We made every effort.

Q. 24. You did have available Exhibit No. 64?

A. Yes. That is in the case.

Q. 25. Did you read Mr. Wilson's testimony?

A. I believe I did read part of it, some time ago.

By Mr. JULICHER:

Q. 26. You are down to the difference, now?

A. The difference between what the actual pay roll was for mechanics and what the estimate was is \$2,229.85. Now, I have a little explanation there, that if the contractor had 1329 figured on using a combination of mechanics and helpers at \$1.70 an hour for the two, and using the same number of hours for each, actually the amount of expended—

Mr. DOYLE. I object to this line of testimony. This man is not qualified to give an expert opinion on the labor to be used in setting tile.

The COMMISSIONER. He hasn't said anything about that.

The WITNESS. You have shown in Exhibit No. 64 that you were going to use one mechanic and one mechanic and one helper at one hour each. As a basis therefor, using the total number of hours actually worked by a mechanic, which was 8,465 hours, and taking that as the basis, we have in your exhibit, then, the only difference could have been the difference between \$1.10 and sixty cents an hour, or fifty cents an hour, and if we take one-half of the actual number of hours worked on the same basis as you have in your exhibit, we would get 4,242½ hours, and if that is the number of hours overpaid at the rate of fifty cents an hour, it meant there was overpaid \$2,116.25.

By Mr. DOYLE:

Q. 27. As compared to \$2,229.85, according to our estimate?

A. That is right. In other words, there is a difference of a few dollars, due to the fact there were 8,465 hours of work in place of 8,328.

Going to the lower part of that statement, under the caption,

“Common Labor,” I find that the total number of hours the 1330 common labor expended on that job was 18,665, and they were paid at the rate of forty-five cents an hour. That is carried out at \$8,399.10. Now, the plaintiff put in an Exhibit No. 64 which indicated that he anticipated using 1,000 hours of common labor at forty-five cents, \$450.00, and 900 hours of the same labor at forty-five cents. He divided that into bull gang and cleaning. I think this 1,000 hours was known as bull gang and 900 hours shown as cleaning labor. However, the total number of hours—

Q. 28. Let me ask you something. He did not include in his estimate anything for the use of common labor in grouting?

A. In your estimate?

Q. 29. Yes.

A. Apparently, Exhibit No. 64 shows the number of common labor hours estimated to be used on this job as 1,900.

By the COMMISSIONER:

Q. 30. You figured the 1,000 plus 900 made that?

A. That is right.

Q. 31. And carried out the total as what?

A. \$855.00. Now, the difference between the amount actually spent for common labor and the amount estimated to be spent for common labor is \$7,544.10.

By Mr. JULICHER:

Q. 32. What is the actual difference in the estimated number of hours and the actual number of hours?

1331 A. It is approximately 16,000 hours. I have not got the exact figure. It is a difference between 18,665 and 1,900, which will be 16,765.

Q. 33. Is there anything in the record to account for this great difference?

A. There is not.

Mr. DOYLE. What do you mean by "record"?

Mr. JULICHER. The plaintiff's record.

The WITNESS. The only record I had, Mr. Doyle, was the company's pay roll.

By Mr. DOYLE:

Q. 34. You don't mean to—

The COMMISSIONER. He isn't through. Let him finish.

The WITNESS. The only record I could obtain any information from was the company's pay roll and ledger, together with correspondence they had, and these records did not reflect anything with reference to this large difference in the number of hours of common labor.

By Mr. DOYLE:

Q. 35. You said you read the record in this case, so far as it applies to Mr. Wilson's testimony. Did you read Mr. Godbey's testimony?

A. I think I did. I read that some three or four months ago.

I don't recall the particular testimony.

1332 Q. 36. When you referred to records you mean the company's records and not the testimony?

A. Oh, no.

By the COMMISSIONER:

Q. 37. It says at the bottom of the page the estimate was approximately ten percent of the amount spent?

A. Yes; 18,000 hours were actually spent, and, 1,900 hours were actually estimated. It is about ten percent. The estimate is about ten percent of the amount that was actually spent for common labor.

Mr. JULICHER. I offer this as Defendant's Exhibit M-M.

Mr. DOYLE. May I make an objection here?

The COMMISSIONER. Yes, sir.

Mr. DOYLE. Let the record show that the plaintiff, Roanoke Marble and Granite Company, does not object to this exhibit so far as it pertains and includes merely the computation of figures for a comparison of costs, actual costs of labor against estimated cost, as shown by plaintiff's exhibit, but does object, however, to that part of the exhibit which purports to express an opinion by the witness, namely, the last paragraph, beginning, "The records do not show," and ending with "the exhibit." We object to that as an expression of opinion of this witness, since he is not qualified to testify as to the relative costs of setting this tile.

By the COMMISSIONER:

Q. 38. You say you are employed now by the Federal Bureau of Investigation?

1333 A. Yes; Your Honor.

Q. 39. How long have you been so employed?

A. Sixteen years.

Q. 40. In what capacity are you employed there?

A. Agent assigned to accounting matters, bank cases, bankruptcy, Court of Claims.

Q. 41. Have you ever taken a course in accountancy?

A. Yes.

Q. 42. Where?

A. University of Minnesota at St. Paul; I have a degree from the Ben Franklin University here in the District of Columbia, and I have taken a number of postgraduate courses.

The COMMISSIONER. I think out of an abundance of caution I will overrule your objection and you can take an exception. It will be admitted as "Defendant's Exhibit M-M."

(The said document, so offered and received in evidence, was marked "Defendant's Exhibit M-M" and made a part of this record.)

Mr. JULICHER. That is all.

The WITNESS. I did want to explain something.

The COMMISSIONER. Explain it to me.

The WITNESS. Well, naturally, I was anxious to know why they did spend such a large amount of common labor. That was just impossible to find out from the records, and I therefore must take

1334 into consideration two things, either it was underestimated—

Mr. DOYLE. I object to this. He is not an accountant and not qualified to state an opinion as to how much labor was necessary.

The COMMISSIONER. Let him continue.

The WITNESS. In plaintiff's petition, on page 19, at the top of the page, he states in the beginning of the work he intended to employ skilled mechanics and semiskilled laborers and common laborers, as the nature of the work permitted at that time, though he said shortly thereafter T. G. Dodd, the defendant's assistant superintendent of construction, in other words, made them stop that practice.

Well, assuming that the contractor then was acting in good faith, and he was, no doubt—I am not saying he wasn't—the first week of the company's pay roll, they expended 15 hours mechanics' labor, and 23 hours common labor, at forty-five cents, or a ratio of one and one-half times common labor to mechanical labor, or to say that for the first four weeks, when he claims he was permitted to go ahead at his usual rate, I find that he expended 331 hours of mechanics' labor and 809 hours of common labor.

Now, that 809 hours is almost half of the total amount estimated of 1,900 hours, or, to go even further still, we will take the first five weeks. In the first five weeks the Company expended 1,909 hours of common labor, more than he had estimated for the entire job. Now, three weeks of those five weeks he says he was permitted to go on without any interference. I am just pointing that out, that it indicates anything you might want to
1335 assume. There was expended 1,909 hours of common labor in the first five weeks of an 'eight months' job, and I just wanted to bring that in for the purpose of having it in the record.

Mr. DOYLE. If Your Honor please, I move to strike that part of the testimony, for the reason that this man is not qualified to testify in this case as to how much mechanics' labor, how much semiskilled labor and how much common labor is required.

The COMMISSIONER. I do not gather that he is doing that. He told us what was required and what the records show was used. As long as he sticks to the factual side, it is a summary of what he found in the records. He just got through saying what the records show, and his discussion there as to his opinion will not be considered by the Commissioner, and I assume not by the Court, but his factual testimony as to what the records shew, I think ought to remain in.

Mr. DOYLE. I have no objection to what the records show. ●

The COMMISSIONER. His qualifications are such I think he has a right to support it.

Mr. DOYLE. My objection goes to his opinion.

The COMMISSIONER. His opinion will not be considered by the Commissioner, and I assume not by the Court.

Mr. DOYLE. Very well. Let it stand.

By Mr. JULICHER:

Q. 43. Mr. Armbruster, are you able to tell what was the ration between mechanics and helpers during the first three or four weeks on this job, from the records?

1336 A. Yes. The first week, there were no helpers at sixty cents. The second week, the ratio of four mechanics to one helper; the third week, the ratio was two mechanics to one helper, and the fourth week the ratio is four mechanics to one helper.

Mr. JULICHER. That is all.

The COMMISSIONER. You may cross-examine.

Cross-examination by Mr. DOYLE:

X Q. 44. Mr. Armbruster, you testified, I believe that you read the records. Did you read Mr. Godbey's testimony?

A. I said I read it three or four months ago.

X Q. 45. Perhaps you did not read the testimony taken at the last session?

A. No.

X Q. 46. You read the testimony taken at Roanoke?

A. I read the testimony three or four months ago. I talked with Mr. Godbey, but I do not recall that I read his testimony given recently.

X Q. 47. Your exhibit here, Defendant's Exhibit L-L, as prepared from the company's pay roll, how did you determine what was common labor, what was mechanical labor, and what was helpers?

A. The only way to determine that is by the rate that they were paid.

X Q. 48. By the rate that was paid?

1337 A. That is right.

X Q. 49. Then I show you the pay roll for the week ending August 30, which is Plaintiff's Exhibit No. 110, offered in evidence in this case. That is the pay roll from which you made up your exhibit?

A. August 30?

X Q. 50. Is that the pay roll you made up your exhibit from, one of them?

A. I would say "yes." This is the type of pay roll I examined down in Roanoke.

X Q. 51. Did you have the company's pay rolls or your own?

A. No; the company's pay rolls.

X Q. 52. Then that is one of them?

A. Yes. I have no way of knowing it.

X Q. 53. You have no way of telling on there how many of these men were helpers or common laborers?

A. There is no way of telling what they did.

X Q. 54. You did not know what these symbols opposite the names stand for, "M" and "H"?

A. I guess I asked about it, "mechanic" and "helper."

X Q. 55. Then you would not know whether some of these men being paid forty-five cents an hour were actually experienced helpers?

A. There is no way of knowing from these pay rolls.

X Q. 56. If Mr. Godbey's testimony shows that is a fact, that in the beginning some of these so-called helpers were only 1338 paid forty-five cents an hour until such time as they qualified for 60 cents an hour, then that would change your set-up, your Exhibit M-M, would it not?

A. It means when they were paid forty-five cents, they were classified at forty-five cents an hour rate.

X Q. 57. It doesn't mean, actually, common laborers, does it?

A. The pay roll doesn't show what they were doing; no; I do not know whether they were setting tile or grouting or using the machine or carrying sand. I don't know, and the pay rolls do not show.

X Q. 58. You did not inquire what these symbols meant?

A. Oh, yes.

X Q. 59. Did you have to inquire what these symbols were?

A. I would say "yes." I made a lot of inquiries. I can't remember any particular one.

X Q. 60. You said you conferred with the officers of the company?

A. Yes.

X Q. 61. Who were they?

A. Mr. Lineburg; Mr. Walters, who is sitting here; and Mr. Godbey; and I conferred with Mrs. Wilson, too.

X Q. 62. I believe you said they were not with the company when this contract was performed?

A. I did say they were not with the company, or did not know the facts at the time the work was being performed.

X Q. 63. Are you sure of that, too, with respect to Mr. Walters and Mr. Godbey?

1339 A. It is true to this extent, that I asked them.

X Q. 64. Asked who?

A. Mr. Walters, what the basis of this claim was, how they fig-

ured the estimate, if there was anything to show how they got these totals, anything to show what kind of work they did, and he said: "No; we do not know. Mr. Wilson did that. I have given you everything I have got. I don't know anything that will help you, other than what you have here."

X Q. 65. They said Mr. Wilson prepared the estimate?

A. Oh, yes; positively. I am sure of that.

X Q. 66. They did not say they were not there, did they?

A. My impression was, if they were there, they were not familiar with the estimate.

X Q. 67. You knew, of course, Mr. Godbey was foreman on the job?

A. That is right. I knew that, and I talked to Mr. Godbey.

X Q. 68. You didn't mean he wasn't there as an employee. You mean he was not an officer of the company?

A. That is right. I talked to other employees.

X Q. 69. Did you know Mr. Walters was bookkeeper for that company?

A. I don't know. He told me when he started work he was not familiar with the case; and in fairness to him, he gave me all the help I could ask anyone to help me on this case. He said, "Here is what we have got," when I said, "We have got to get more facts."

X Q. 70. You are speaking of facts with relation to the estimate. You had access to the company's records?

1340 A. Books, the general journal, general ledger, and these pay rolls.

X Q. 71. Did you have the cashbook?

A. Yes; I believe the cashbook.

X Q. 72. The checkbook?

A. I didn't go into the checkbook. There was no reason for that, as I see it.

X Q. 73. You had all the company's records?

A. I had their records, and made copies of balance sheets, anything I thought might be of help in connection with this case.

X Q. 74. Your Exhibit M-M, showing your relation of cost of actual common labor against the estimated cost—you did not take into consideration the difference between the estimated time required to complete this contract and the actual time it took to complete the contract?

A. No; I didn't. There was nothing in the records to show when they expected to complete it. There is just one indication, and that is the timekeeper's wages were estimated for twelve weeks, and that is the only indication of how long they expected this job to take, assuming they intended to have a timekeeper on the job for its duration.

X Q. 75. That would be about three months?

A. They didn't have a timekeeper the first week.

X Q. 76. You spoke about the fact there was nothing in the records showing how long it would take for this contract. You are speaking about the company's records, I take it?

A. Yes.

1341 By the COMMISSIONER:

X Q. 77. Not the testimony taken?

A. No. I am not considering the testimony at all.

By Mr. DOYLE:

X Q. 78. Tell us what kind of a record the company could keep for that purpose.

A. I am not prepared to make an analysis of that job. I am not going to say now what you should have for that business. I can't do that on the spur of the moment.

X Q. 79. You would not keep an estimate in the cashbook or ledger or journal, would you?

A. You are speaking of the estimate?

X Q. 80. Yes.

A. Well, I have examined many other jobs, and I think even in the testimony this morning, we found an estimate of a certain type. I have usually found estimate sheets, but I was not able to find any on this job.

X Q. 81. You read Mr. Wilson's testimony?

A. Was that before the final hearing?

X Q. 82. Yes.

A. Yes; I did.

X Q. 83. Do you recall that when he testified and we offered in evidence the estimates of costs of this job, he testified they were his original working sheets from which he prepared his bid on this job?

1342 A. He was testifying from some papers.

X Q. 84. They are not in evidence, but he was testifying from work sheets from which he made up his bid on this job?

A. Yes. I tried to find them and could not.

X Q. 85. Now, with respect to the difference in relation of the cost of common labor, you did not take into consideration the fact that Government Inspector Dodd issued a rule that no semiskilled labor would be employed?

Mr. JULIHER. I object.

Mr. DOYLE. Let him answer.

The COMMISSIONER. What is your objection?

Mr. JULIHER. This man is not qualified to answer such a question. His testimony is predicated—

The COMMISSIONER. He can answer what he took into consideration.

Mr. JULIER. He asked him if he took into consideration Dodd's ruling.

The COMMISSIONER. I don't know whether he took that into consideration or not, but I think he is entitled under cross-examination to ask him.

The WITNESS. No; I did not take it into consideration, so far as this schedule is concerned. I knew of the testimony of Mr. Dodd and I knew of his contentions, and I knew of the contentions of the plaintiff, but these records reflect only the facts.

1343 By Mr. DOYLE:

X Q. 86. You recall Mr. Wilson's testimony, and I told you, also, that Mr. Godbey has testified that after the first three weeks on this job they were required to employ common labor as helpers to mechanics, and that it necessitated more common labor than what they estimated. You did not—in preparing this schedule—you did not take that into consideration?

A. No; I did not.

X Q. 87. In making your schedule M-M?

A. No. I think I can state this schedule reflects a picture of the pay roll, and no opinion.

X Q. 88. You said the records were rather incomplete. What do you mean by that statement?

A. I find in many cases they have progress reports; that is, we know how much tile is being set in a day or a week, or how much progress is being made during a certain week or a certain month. We have inspectors' reports that show these facts. However, those are Government records; but we have, in cases, records of a contractor that reveal more complete information with respect to the employees—that is, they give the employee's full title, and sometimes even on what building he is working, what section of the job he is working—but these pay rolls do not show that.

X Q. 89. Is that always true with respect to small contractors or subcontractors?

1344 A. I can't say, relatively this is a small contract. I have had smaller ones than this, and they have had those records.

The COMMISSIONER. You say "small contractors." I don't know whether this is large or small.

Mr. DOYLE, I am speaking about the system of records, as far as showing progress reports.

The WITNESS. I guess I have gotten off the main theme. Will you find out what the question is?

By the COMMISSIONER:

X Q. 90. Are progress reports customarily in all contracts?

A. No; not in all contracts.

X Q. 91. Which ones generally do you not expect to find it?

A. Well, it is hard to say, because I have never made a census or tabulation. I have run into a lot of them.

X Q. 92. Can you imagine yourself a contractor, large or small, that would want to go through without that daily report?

A. No.

By Mr. DOYLE:

X Q. 93. You do not know, of course, whether Mr. Wilson had any such reports, himself, in this case?

A. I asked for them, and they were not able to get ahold of them.

X Q. 94. They are not available now, and Mr. Wilson is dead?

A. Yes.

1345 X Q. 95. I believe you also asked for his original work sheets from which he made his estimate?

A. I asked for everything they had. They knew what I was trying to get. Mr. Walters and Mr. Godbey both understood.

X Q. 96. One more question with respect to this Exhibit M-M. Your tabulation, where you show common labor—you mean just that labor that is paid forty-five cents an hour, irrespective of what the class was?

A. That is right; at that rate per hour.

X Q. 97. And do you know that on this schedule here, Defendant's Exhibit L-L, the labor referred to as having bee' paid at the rate of thirty cents an hour are the marble polishers and truck driver?

A. The pay rolls do not show.

X Q. 98. This is probably made up before Mr. Godbey's last testimony?

A. No; this is a recap made up day before yesterday.

X Q. 99. You have not read Mr. Godbey's testimony?

A. No.

Mr. JULICHER. I don't know that Mr. Godbey's testimony would make any difference in the books.

The COMMISSIONER. No; but counsel has a right to show he did not take that into consideration in making the figures; that is all he is trying to do.

Mr. DOYLE. That is all

Mr. JULICHER. The Government rests.

The COMMISSIONER. Does plaintiff want to go ahead with rebuttal testimony now?

1346 Mr. DOYLE. I want to recall Mr. Godbey.

The COMMISSIONER. Is this a recall?

Mr. DOYLE. Yes, if Your Honor please, I would like to have the record show that Government Exhibit H-H, which is a photo-

static copy of Inspector Dodd's report, offered in evidence at the last session—

The COMMISSIONER. It was offered today.

Mr. DOYLE. The photostatic copy is a substituted copy in lieu of that report, offered with the understanding that it would include the covering letter and some other letters not included in the carbon copy of the report; therefore, I would like to ask Mr. Godbey a few questions with reference to matters contained in the papers attached to that report.

REBUTTAL TESTIMONY

FRANK M. GODBEY, a witness previously produced on behalf of the plaintiff, resumed the stand, was examined, and, in answer to interrogatories, testified as follows:

Redirect examination by Mr. DOYLE:

R. D. Q. 629. Mr. Godbey, I have asked you to examine this Government Exhibit H-H, Inspector Dodd's report, and direct your attention to a letter from the Virginia State Employment Service addressed to Mr. Dodd, attached to that report. The letter is dated November 1, 1934, and on the second page there appears the statement that their records do not show the following men were sent to the Roanoke Marble and Granite Company, Haynes, James, and Long. What are the facts in respect to that?

A. They did work for us on the job.

R. D. Q. 630. Did they necessarily have to be employed through the Virginia Employment Service?

A. No; not always. We got men through the union. We got men both ways.

R. D. Q. 631. That is, if they were mechanics or semiskilled?

A. Mechanics or semiskilled help came through the union. The common labor came from the Employment Service.

R. D. Q. 632. There is also a letter from the Virginia Employment Service dated November 2, 1934, attached to that report, which states in the last paragraph: "Records do not show that the following were sent to Roanoke Marble and Granite Company: A. Reynolds, Nick Principe, Garland Lawrence, and J. I. Chocklett." What were the facts with reference to that?

A. They worked for us. I remember the men working on the job.

R. D. Q. 633. Do you remember how you hired them, what class they were? Would the pay rolls show?

A. Yes, sir; our pay roll would show. Some of the boys have been promoted since then, and I have forgotten what they were at that time. Nick Principe was a helper, A. Reynolds

was a helper, Garland Lawrence is listed as a helper, and Chocklett is listed as a helper on our pay roll.

R. D. Q. 634. You are referring to Plaintiff's Exhibit No. 111, pay roll for the week ending September 9, 1934?

A. Yes, sir.

R. D. Q. 635. I note on there that those men you have just mentioned as helpers were only paid forty-five cents an hour?

A. Yes, sir.

R. D. Q. 636. What was the reason for that? Why didn't you pay them sixty cents an hour?

A. Under Mr. Dodd's ruling we couldn't pay them sixty cents.

R. D. Q. 637. This was prior to that.

A. The men just started at forty-five cents and hadn't worked up to sixty cents.

R. D. Q. 638. Was it your practice to pay them forty-five cents until they learned more?

A. Yes. They would start out at forty-five, and when he learns more, he is paid more.

R. D. Q. 639. Turning again to the Virginia Employment Service letter, dated November 16, 1934, attached to Inspector Dodd's report, I call your attention to a statement on page 2 thereof which says, "H. Davis, furnished by the union as a bricklayer's helper, appeared on C. L. Tinsley's pay roll as a laborer." What does that indicate?

A. It indicates we did get our helpers from the union. They sent them.

R. D. Q. 640. Your union followed the bricklayer's group?

1349 A. They were obtained through the same medium.

R. D. Q. 641. In the same letter, referring to the last page, the statement, "R. E. Haynes and J. C. James were reported through error, as we find their cards in our file," what does that indicate to you?

A. It is just one of the many mistakes we had to contend with on that job; men coming by name and listing by initials, were going by initials and listed at the employment agency by name. Sometimes they would get mixed up. They didn't have a card for that man, and they would write. They might actually have a working card, but it caused a lot of delay and confusion in getting the cards straight.

R. D. Q. 642. There was confusion in the employment office listing a man as your employee?

A. Yes.

R. D. Q. 643. I also call your attention to the letter of November 28, 1934: "We have no return card on B. Vaughn as sent to the

Roanoke Marble and Granite Company. W. Manfredini was previously reported." What does that indicate?

A. Well, the return card—when they send a man to us, he has a double card. When we put him to work we filled in half the card and sent it to the Employment Service. Maybe we didn't put him to work that day or he didn't want to go to work that day, and we didn't return his card; but when we put him to work, we would return the card.

1350 Sometimes they would come on Friday and didn't want to go to work until Monday. It was the man's fault as much as ours.

R. D. Q. 644. Who is this Manfredini?

A. He was an Italian boy, a helper from Washington. I remember him well.

R. D. Q. 645. Which meant, then, he would not come through the Employment Service?

A. No. He would come through the union, as a helper.

R. D. Q. 646. Mr. Godbey, did you have occasion to get any common labor from Mr. Roberts or any other subcontractors on the job at that time?

A. Yes, sir; lots of times. If one subcontractor had a laborer who was an unusually good man, he would recommend him to another subcontractor when he was through with him, in order to keep the good man on the job.

R. D. Q. 647. He would be transferred from one pay roll to another?

A. Yes, sir. That was permissible with the Employment Service.

R. D. Q. 648. Did it result in any confusion?

A. Oh, yes. That was our fault. That wasn't the Employment Service's fault. It caused a lot of confusion.

R. D. Q. 649. But it was common practice?

A. Yes, sir; we all did it.

R. D. Q. 650. You were foreman on the job at the time?

A. Yes.

R. D. Q. 651. And you testified you had been previously employed for some time in this Company?

A. Yes.

1351 R. D. Q. 652. And you are an officer of the company?

A. No; I still work for the company in the same capacity I did then.

R. D. Q. 653. You conferred with Mr. Armbruster with reference to information concerning this particular case?

A. Yes; I helped Mr. Armbruster and the man who was with him as much as I could; whenever I could, I tried to help him.

R. D. Q. 654. Did he ever indicate he desired to interview any of the mechanics on this job?

A. Yes; he said he would like to talk with some of the men who worked on the job.

R. D. Q. 655. Did you help him?

A. I found all I could that were still in town.

R. D. Q. 656. What was the subject of the conversation?

Mr. JULICHER. I object.

The COMMISSIONER. It is overruled for the time being.

A. Well, it was on different subjects. He wanted to know about working conditions, or were they ever asked to kick back any of their money.

R. D. Q. 656. What do you mean, "kick-back"?

A. That is the practice in the building business; get the regular scale, and then give it back.

R. D. Q. 657. Do you know of any such practice in this case?

A. No, sir; I don't know of any in Roanoke.

1352 R. D. Q. 658. Did you assist Mr. Wilson in any way in preparing his original estimate for this bid?

A. Only that it was slack times then and not much work and I would stay around the office and do what little things I could. When it comes to making up an estimate, that is not my job. I couldn't do it, and I didn't help.

R. D. Q. 659. Do you not recall having reviewed any of his working papers with reference to estimates of labor?

A. Yes. I would go over it. He would ask my opinions how long it would take, and I checked how long he had estimated it would take, and that was a double check.

R. D. Q. 660. Did you do it on this particular job?

A. Yes, sir.

R. D. Q. 661. Before submitting this particular bid?

A. Yes; before Blair started the building.

R. D. Q. 662. Did you keep any sort of records, progress reports as to the progress of the work from week to week on this job? Did you know whether he did nor not?

A. Yes, sir. He had them. They were sent to Mr. Wilson, and Mr. Roberts also required a report from us, how many men we worked and how we were getting along each week.

R. D. Q. 663. Who got them up?

A. I did, as foreman on the job.

R. D. Q. 664. You got them up each week?

A. Yes. Sometimes I delivered them and sometimes
1353 Mr. Knox, the timekeeper, delivered them. That was part of our job.

Re-cross-examination by Mr. JULICHER:

R. X. Q. 665. Did you attempt to show the number of square feet of tile laid every day in that report?

A. Approximately; yes, sir; not to the exact amount.

R. X. Q. 666. What do you mean, "approximately"? Did you show how much each man laid?

A. Yes; we did that for quite awhile. We kept a record of each man's work.

R. X. Q. 667. What happened to those reports?

A. I turned them in to my office and Mr. Roberts. In Mr. Roberts' case, he was not interested in what each man did. We gave him a weekly report.

R. X. Q. 668. You don't know anything about preparing the estimate?

A. Only estimating the labor. I could look at a job and say how many mechanics it would take for a labor job. I have done it for years and years.

R. X. Q. 669. Did you say you did not have to take your men from the Virginia Employment Service? If a man came up to your job you could hire him?

A. If he had a card for that job.

R. X. Q. 670. From whom?

A. Virginia Employment Service.

1354 R. X. Q. 671. If he didn't have a card, you would not hire him?

A. No. It didn't designate what subcontractor to work for. He would come up with a card for that job. The plumber or the plasterer or I could hire him.

R. X. Q. 672. Whomever he went to first?

A. Yes; the softest job he could find, usually.

By Mr. DOYLE:

R. X. Q. 673. Was that this common labor or mechanics?

A. No, sir. The mechanics came from the union; just the common labor from the employment bureau.

By Mr. JULICHER:

R. X. Q. 674. Do your records show how much tile work had to be removed, how much was replaced, and who was doing the removing and replacing?

A. No; only our orders for tile. We could tell by that, when we estimated so much tile.

R. X. Q. 675. You could only tell you used so much more tile than estimated?

A. Yes. We didn't keep any record of that.

Mr. JULICHER. That is all.

P. E. WALTERS, a witness previously produced on behalf of the plaintiff, resumed the stand, was examined, and, in answer to interrogatories, testified as follows:

By the COMMISSIONER:

Q. 33. What are your initials, Mr. Walters?

1355 A. P. E. Walters.

Redirect examination by Mr. DOYLE:

R. D. Q. 39. Mr. Walters, are you employed by the Roanoke Marble and Granite Company?

A. Yes, sir.

R. D. Q. 40. What is your position at the present time?

A. Secretary and Treasurer, bookkeeper.

R. D. Q. 41. Were you employed with them at the time of this Veterans' Facility contract in Roanoke?

A. No, sir.

R. D. Q. 42. When did you go with them?

A. 1937, January.

R. D. Q. 43. You were in Roanoke at the time when Mr. Wilson testified in this case?

A. Yes, sir.

R. D. Q. 44. And you identified some documents yourself?

A. I did.

R. D. Q. 45. You have custody of the records of the company at the present time?

A. Yes, sir.

R. D. Q. 46. Especially the records with reference to this particular contract?

A. Yes, sir.

R. D. Q. 47. You have Mr. Wilson's original working papers that he had at that hearing with reference to his estimates
1356 of labor and materials on this contract?

A. Yes, sir.

R. D. Q. 48. Did you have them at the time Mr. Armbruster was in Roanoke?

A. Yes, sir.

R. D. Q. 49. Did you offer them and make them available to him?

A. Yes, sir.

R. D. Q. 50. He had them also?

A. Yes, sir.

R. D. Q. 51. And Mr. Wilson is dead?

A. Yes, sir.

R. D. Q. 52. He died last summer?

A. Yes.

R. D. Q. 53. What, if any, assistance did you give Mr. Wilson in preparing this exhibit?

A. I prepared the overhead expense exhibit.

R. D. Q. 54. You prepared the overhead expense exhibit offered in evidence in this case?

A. That is right.

R. D. Q. 55. Did he prepare the other exhibits covering the actual cost of the labor and material in this case?

A. Yes, sir.

R. D. Q. 56. Did you give Mr. Armbruster all the help he required down there?

A. Yes, sir. I gave him all the assistance I could.

1357 R. D. Q. 58. And all that he asked for?

A. All that he asked for.

R. D. Q. 59. Did you prepare for Mr. Armbruster any estimates or any statements of actual costs of labor and materials on other tile-setting jobs for comparison with this case?

A. No; I did not.

R. D. Q. 60. Who did?

A. Mr. Lineburger did.

R. D. Q. 61. Who is Mr. Lineburger?

A. He is the estimator and vice president.

R. D. Q. 62. What jobs did he cover?

A. Hotel Roanoke.

R. D. Q. 63. Hotel Roanoke, setting tile?

A. Setting tile, terrazzo floor, and terrazzo base.

R. D. Q. 64. What other jobs?

A. State Teachers College at Radford, setting tile and terrazzo floor; Prince Edward County Court House at Farmville, setting tile and terrazzo floors.

Mr. JULICHER. If Your Honor please, this is all immaterial. I don't see anything about these other jobs. All he knows is what he reads off.

Mr. DOYLE. If you will bear with us, we will show you.

The COMMISSIONER. All right.

By Mr. DOYLE:

R. D. Q. 65. Was that done at the request of Mr. Armbruster?

A. Yes, sir.

1358 R. D. Q. 66. How did the statement of costs on these jobs compare with the estimated cost on this contract, this Roanoke contract?

A. Let's see. I don't have the Hotel Roanoke estimated labor. The job was one and one-half percent less than the labor cost.

Mr. JULICHER. I object to that as immaterial, so far as this job is concerned.

The COMMISSIONER. Overruled and exception noted.

By Mr. DOYLE:

R. D. Q. 67. Than what labor cost?

A. Actual cost; estimated labor was one and one-half percent less than the actual cost.

R. D. Q. 68. Than the actual cost on the same job?

A. Yes, sir.

R. D. Q. 69. Your estimated labor cost on the Roanoke Hotel job was one and one-half percent less than the actual labor cost on the same job, is that right?

A. Yes, sir. The estimated labor cost was \$8,638.10, and the actual labor cost was \$8,389.77. The estimated labor on this job was one and one-half percent less than the actual labor cost.

R. D. Q. 70. How about your other job?

A. The State Teachers College at Radford, two percent more, that is, the actual labor was two percent more than it was actually estimated.

R. D. Q. 71. Have you got the figures there?

A. Here are the figures, but it doesn't show which column 1359 is which; \$1,813.61 and \$1,665.26.

Mr. JULICHER. My objection still stands about all this testimony. This witness didn't even prepare these.

The COMMISSIONER. Very well.

By Mr. DOYLE:

R. D. Q. 72. Do you have a third one?

A. Farmville Court House, actual cost, \$921.68, estimated cost, \$1,000.45.

R. D. Q. 73. The estimated cost was higher than the actual cost?

A. Yes. The Catawba Sanitarium, estimated cost, \$1,404.06.

R. D. Q. 74. The actual cost was what?

A. The actual cost was \$1,007.08.

R. D. Q. 75. Have you got another one?

A. The Charlottesville Hospital, the actual cost was \$1,246.97, and the estimated cost was \$1,393.50.

R. D. Q. 76. Now, did you report that to Mr. Armbruster?

A. Mr. Lineburger did; I didn't.

R. D. Q. 77. What did he say about it?

A. I don't know.

By the COMMISSIONER:

R. D. Q. 78. Were you there when he reported it?

A. No; I don't know what he said.

Mr. DOYLE. That is all.

1360

Re-cross-examination by Mr. JULICHER:

R. X Q. 79. Did Mr. Armbruster ask you to prepare these things, or ask you to have them prepared?

A. No. Mr. Lineburger and Mr. Armbruster were discussing the matter and how close the estimates were to actual cost, and Mr. Lineburger said that he would be glad to prepare this to show the actual cost and estimates on other jobs in order to compare our estimate as proof that our estimate on this job was in line.

R. X Q. 80. Were you there when this was said?

A. Yes.

R. X Q. 81. Is that the reason these were prepared?

A. Yes, sir.

R. X Q. 82. Do you know whether Mr. Armbruster used those reports?

A. No, sir; I do not.

R. X Q. 83. He did not tell you they were of no help to him?

A. No, sir.

Mr. JULICHER. That is all.

(Witness excused.)

The COMMISSIONER. The motion to exclude is overruled and an exception noted.

Mr. DOYLE. I wish at this time to recall Mr. Roberts.

1361 C. W. ROBERTS, a witness previously produced on behalf of the plaintiff, resumed the stand, was examined, and, in answer to interrogatories, testified as follows:

By the COMMISSIONER:

R. D. Q. 751. Give us your full name.

A. C. W. Roberts.

Redirect examination by Mr. DOYLE:

R. D. Q. 752. Mr. Roberts, you know Mr. C. B. Wilson, or did you know him?

A. I did.

R. D. Q. 753. And you know Mr. Godbey, who has testified here today?

A. Yes, sir.

R. D. Q. 754. And you recall that Mr. Godbey was foreman for the Roanoke Marble and Granite Company on the installation of tile, terrazzo, and marble work at the Veterans' Hospital in Roanoke?

A. He was.

R. D. Q. 755. There has been some testimony in this case with reference to a conference or a discussion that Mr. Wilson and Mr. Godbey purported to have had with respect to Mr. Thomas G. Dodd, on or about the middle of September at this Veterans job

with reference to the employment or nonemployment by the Roanoke Marble and Granite Company of so-called semiskilled labor or helpers to assist skilled mechanics in laying tile and terrazzo work.

I ask you to state for the purpose of the record if you know of any such conference or discussion taking place, and if so, were you present?

A. Yes, sir; I was present, some two or three weeks after tile work started.

R. D. Q. 756. Will you please state for the purpose of the record the facts with reference to that conference, where it took place, who was there, the occasion for it, and what happened?

A. Well, it took place in Captain Feltham's office and Mr. Wilson, Mr. Godbey, and his one other representative, I cannot recall his name.

R. D. Q. 757. Mr. Knox, his timekeeper?

A. Mr. Knox, his timekeeper. Mr. Wilson came to my office and stated he wanted me to go with them to Mr. Dodd's office, that Mr. Dodd had ordered him not to use improvers or apprentices on the tile work, that all his labor had to be mechanics and laborers; no intermediate grades would be allowed to be used. I went with him up to Mr. Dodd's office, and he asked him to restate that, and Mr. Dodd restated it very emphatically, that he would not be allowed to use improvers or helpers but it would be simply common labor or dollar-ten mechanics. Mr. Wilson requested that he put this in writing. He stated he would not put it in writing, but he would enforce it. That is about the extent of it.

R. D. Q. 758. Were you interested in that ruling and in what way?

1363 A. I was interested to the extent that it applied to all other helpers and mechanics of every description.

R. D. Q. 759. Both for the contractor and all subcontractors?

A. All subcontractors and general contractors.

R. D. Q. 760. And did you make any protest to Mr. Dodd yourself on behalf of the contractor and this subcontractor?

A. I made a great many protests in the early part of the job in connection with carpenters and steel, reinforcing steel helpers.

R. D. Q. 761. Same subject?

A. Yes.

R. D. Q. 762. You said that Mr. Wilson came to your office. You had an office on the job?

A. Yes; some city block from Captain Feltham's office.

R. D. Q. 763. Captain Feltham wasn't there?

A. I don't think Captain Feltham was present. I am sure he was not.

R. D. Q. 764. Did you concur in the protest made by Mr. Wilson with reference to this matter?

A. Well, I did to the extent of reasoning that it was reasonable to suppose we could use intermediate grade workmen.

R. D. Q. 765. What has been your experience with reference to using intermediate labor, semiskilled labor, for tile setters? Is it customary?

A. It is customary.

R. D. Q. 766. At an intermediate wage rate?

A. Yes.

R. D. Q. 767. Less than mechanics and more than common labor?

1364 A. Yes.

Re-cross-examination by Mr. JULICHER:

R. X Q. 768. What did you do after Mr. Dodd made this ruling that you stated?

A. I went right ahead with my work. I ordered Mr. Wilson to go ahead.

R. X Q. 770. You did not file any protest?

A. Except verbally.

R. X Q. 771. Nothing in writing?

A. I don't think so on this particular subject.

R. X Q. 772. You were aware that the contract provided for a specific manner in which to file a protest?

A. I was.

R. X Q. 773. You did not do that?

A. I read that clause that the contract provided that, yes.

R. X Q. 774. I mean you did not do it? You did not file a written protest within ten days, did you?

A. Not on this matter, I don't think.

R. X Q. 775. You were the general superintendent on this job, weren't you?

A. I was.

R. X Q. 776. You had other men under you, other assistants?

A. Yes.

R. X Q. 777. How many assistants did you have?

A. I couldn't name them. I had several assistants. I had Mr. Durden, Mr. Ireland, J. T. Roberts, J. E. Lacey

1365 was the engineer, T. E. Devinney.

R. X Q. 778. Durden, Ireland, and Lacey were in various capacities?

A. Yes; and a number of other minor ones.

R. X Q. 779. Devinney was in that office too?

A. Yes; in my office.

R. X Q. 780. In Roanoke?

A. Yes.

Redirect examination by Mr. KILPATRICK:

R. D. Q. 781. Mr. Roberts, did you suffer any delays in this construction work for Algernon Blair at Roanoke because of a shortage of form lumber?

A. No, sir.

R. D. Q. 782. How far in advance of the installation of wooden forms do you build them, or did you build them at Roanoke?

A. I would say we started fabrication some three to six days in advance of the erecting of them.

R. D. Q. 783. If there had been a danger of a shortage of form lumber, how far in advance of the actual shortage would you have known of it?

A. Well, I would have known of it when we did start the fabrication of forms.

R. D. Q. 784. What would you have done if you had seen such a shortage approaching?

A. If I didn't have a record of cars reaching me, I would use local lumber.

R. D. Q. 785. Was local lumber of the type available in and around Roanoke?

A. It was.

R. D. Q. 786. When did you first begin building outside scaffolds for the brick masons, approximately?

A. I would say about the middle of June; approximately the middle of June.

R. D. Q. 787. That was on what building? Do you know?

A. Building No. 7, I believe.

R. D. Q. 788. Is the same type lumber used for scaffolds as is used for forms?

A. Yes, sir.

R. D. Q. 789. Then deliveries of that type of lumber received at the job prior to June 15 would have been used for what purpose?

A. Building forms.

R. D. Q. 790. None of it would have been for building outside scaffolds.

A. No, sir. We hadn't build any outside scaffolds.

R. D. Q. 791. After the general excavation for Buildings Five and Six and after the footings were poured, was there an unusual delay in the erection of those two particular buildings?

A. Yes; there was quite a long delay.

R. D. Q. 797. What was the cause of that?

1367 A. Well, we were delayed there on account of the plumbing and heating, the plumbing work and electrical work, particularly the plumbing work.

R. D. Q. 793. That work was being done by another contract?

A. Redmon was the plumbing and heating contractor. I think they went out of business. The date of their going, I cannot recall it.

R. D. Q. 794. The record shows it was June 26.

A. And then that was taken over by the Virginia Engineering Company.

R. D. Q. 795. Did they come in immediately after Redmon failed?

A. There was several days' interval between the time they failed and they arrived on the job.

R. D. Q. 796. Did the insurance company do anything in between the failure and the Virginia Engineering Company's coming on the job?

A. They did a small amount of electrical work. I don't recall anything but the electrical work.

The COMMISSIONER. Redmon's surety?

Mr. KILPATRICK. Yes, sir.

By Mr. KILPATRICK:

R. D. Q. 797. During the period these Buildings Five and Six were delayed, did you have ample form lumber available for those buildings?

A. Yes, sir.

1368 R. D. Q. 798. During that period did you actually build any forms for Buildings Five and Six?

A. Yes; we fabricated quite a bit of the forms for Number Six and part of them for Number Five.

R. D. Q. 799. Why didn't you erect all of them?

A. Well, we were being held up on all the other work so we waited while we could start other trades going. The Virginia Engineering superintendent asked us to hold up until he could get further along on Seven, Four, Two, and One, so plastering would start and tile partitions.

R. D. Q. 800. If you had erected these wooden forms on Five and Six some days in advance of the time the mechanical equipment contractor would have gone to work there, would it have had any adverse effect on your progress?

A. Yes. Those forms—we would have to take men from buildings where they were needed to get other trades going and the forms would damage because they didn't have sufficient amount

of material to do all places. • Virginia Engineering didn't have that much material on the job at that time.

R. D. Q. 801. If the forms had been waiting—

A. They would have damaged.

R. D. Q. 802. What do you mean?

A. The sum would have warped them and bent them up and would have had to be reworked and reset.

R. D. Q. 803. Did that actually happen on your buildings there at Roanoke?

1369 A. Yes, sir. There were several buildings we had to rework a part of the forms.

R. D. Q. 804. Because of the fact they had to stand, so long waiting for the mechanical contractors?

A. Yes.

R. D. Q. 805. As to the forms for Building Six, were they built right at the building site?

A. Built almost immediately in front of Building No. Six.

R. D. Q. 806. Was that true of all the forms? Were they built at the building site?

A. No; they were built at a central location. This central location happened to be near and in front of Building No. 6.

R. D. Q. 807. Then if Mr. Dodd passed by the building and saw no forms being built at the building site, it could be possible you were building the forms at the central plant?

A. It could be possible all the forms had been fabricated.

R. D. Q. 808. Mr. Roberts, I hand you Defendant's Exhibit E, which is a group of snapshots identified by Captain Feltham as having been taken by him at Roanoke, and which, I believe he stated, illustrated defective concrete. Have you examined those snapshots before?

A. Yes, sir.

R. D. Q. 809. Can you tell from those snapshots the approximate quantity of defective concrete that is involved? Do you recognize those locations so you can do that?

A. Yes, sir; I tried to work up approximate quantities in a number of places involved.

1370 R. D. Q. 810. Have you made some notes as to that?

A. Yes, sir. I have notes I made in the form of a letter to Mr. Clarke. I believe that is all the notes.

R. D. Q. 811. If the Court will permit, you may refresh your recollection by getting those notes in order that I may ask you a number of questions about that concrete.

A. I think I remember.

The COMMISSIONER. You had better give him the letter.

The WITNESS. This letter was without any drawings. That was written from memory, and I checked it against these pictures here.

By Mr. KILPATRICK:

R. D. Q. 812. Will you please tell the Court what is involved there in the way of defective concrete, and how much labor and material would be involved in moving and replacing that defective concrete?

A. Well, there were eight columns from the basement to the first floor, and these columns, from memory I have taken that, were about sixteen by twenty in size and about ten feet high, and to correct those columns, it takes from six to eight yards of concrete.

R. D. Q. 813. Cubic yards of concrete?

A. Cubic yards of concrete.

R. D. Q. 815. What was involved in removing and replacing that concrete, those eight columns?

1371 A. We simply removed the forms, used an air hammer, cut the column loose, set the forms back in place, clamped up and repoured, using the same forms that we used for the original column.

R. D. Q. 816. How many workmen would that require?

The COMMISSIONER. That would depend on how many worked on that.

By Mr. KILPATRICK:

R. D. Q. 817. How many hours of labor?

A. We only use one machine and one workman. An air hammer with a point on it. One workman and a helper and one air machine.

R. D. Q. 818. Would the operator of that be a mechanic, a \$1.10 an hour man?

A. Yes; the operator would be a mechanic at \$1.10 an hour. I would say the worst column would take half a day but the average column would take three hours. That would depend on the access he could get to it, his air hammer, whether he could get to all sides of it or not.

R. D. Q. 819. Could you estimate the maximum mechanic and labor hours involved in removing those eight columns?

A. I would think the maximum hours for those eight columns would be sixteen to twenty hours, mechanic's time.

R. D. Q. 820. Now, what other defective concrete is shown by Exhibit E?

A. Two spandrel beams. This exhibit only shows one, but there were two.

R. D. Q. 821. Where were they located?

A. First floor level.

1372 R. D. Q. 822. What building?

A. Building No. 2. This exhibit shows spandrel 133, but there was another one just like it and that made two of them.

R. D. Q. 823. About how much concrete was involved there?

A. I would say about two and one-half yards of concrete involved in that.

R. D. Q. 824. How long would it take to remove those beams?

A. From my estimate here, I have four hours, two mechanics and two machines. I had two hammers on the job. I think I used them on those spandrel beams.

R. D. Q. 825. How many hammers did you have on this job?

A. Two.

R. D. Q. 826. Did you ever have four?

A. No.

R. D. Q. 827. How many air compressors did you have?

A. One. I bought it on the job.

R. D. Q. 828. What else do you find in the way of faulty concrete there?

A. On these pictures I find a window at the end of the building. It is duplicated here three or four times, but it is a window where we had to move a window slightly.

R. D. Q. 829. You say it is duplicated three or four times?

A. Yes. The spandrel beam is duplicated four times and column 140 four times.

1373 By Mr. JULICHER:

R. D. Q. 830. They are different views?

A. Not necessarily.

R. D. Q. 831. They are all the same? Exactly the same?

A. Well, I would have to look more carefully than I have.

R. D. Q. 832. You can look at that and see whether it is the same picture?

A. I just looked on the back of the picture, and they are not together. Therefore, I cannot see them both at once without taking them apart. I didn't look at them both at once.

R. D. Q. 833. You did not do that although you claim you examined that exhibit?

A. I looked at it and saw it was the same and the record shows it was the same.

By Mr. KILPATRICK:

R. D. Q. 834. Mr. Roberts, have you counted the number of snapshots there?

A. No, sir.

R. D. Q. 835. Will you do that, please?

Mr. JULICHER. I think they are numbered.

By the COMMISSIONER:

R. D. Q. 836. What is the last number?

A. Forty-five on back and two on the face.

1374

By Mr. KILPATRICK:

R. D. Q. 837. Does it represent forty-five different pieces of defective concrete?

A. No, sir.

R. D. Q. 838. Can you tell us how many it does represent?

A. My opinion, no, I have not counted just how many. A lot of them exhibited something else and not defective concrete and shows some to exhibit progress.

R. D. Q. 839. You finished telling us about two spandrel beams in Building No. 2.

A. Then there was a wall leading in the basement corridor, and that is a little retaining wall. It was put in on the wrong side of a column at one end. That wall was some twelve inches wide and about five feet high, and about twenty feet long. That took, I would say, I would say about four yards of concrete to replace it.

R. D. Q. 840. Was that a case of defective concrete?

A. No, sir; that was mislocated concrete.

R. D. Q. 841. Was that the wall Captain Feltham referred to and drew a diagram on the blackboard?

A. Yes, sir.

R. D. Q. 842. Then you were ordered to remove that not on account of defective concrete, but, as he said, because it was out of line?

A. Yes, sir.

1375 R. D. Q. 843. How much labor was involved in removing that wall?

A. We removed that with a railroad rail. Six laborers rammed it down; three hours for six men and a foreman.

R. D. Q. 844. Why didn't you use the air hammer there?

A. Well, we thought we could move it quicker with a railroad rail and cheaper.

R. D. Q. 845. Now, you made some reference there to a section of wall near the window in the basement. Have you estimated the value of that?

A. Yes, my record is a little wrong there. I have set the area at that window—since making this record I have checked it off. I am slightly in error.

R. D. Q. 846. What is the correct estimate?

A. I will find that out. I have said in this it was a space possibly two feet long, one foot thick, and four feet high, but there were two places, one on each side of the window, one about half

that dimension, and the other one about three feet long instead of four, as stated here, and this wouldn't take more than half a yard of concrete to replace it.

R. D. Q. 847. How much time would it take to remove it?

A. It would take a little more time than I stated in here. It would take about four hours from those two places with mechanic, helper, and machine.

1376 R. D. Q. 848. All right. What other conditions do you find there in Captain Feltham's snapshots? Does he show any sections of the floor?

A. Yes, he shows a section of the floor.

R. D. Q. 849. What is the number of that picture?

A. That is "E-13" that covers that one.

R. D. Q. 850. Picture No. 13 in Exhibit E?

A. Yes. We cut out a place approximately four feet wide, possibly six feet wide, and eight feet long, and about a foot off the top of the column.

R. D. Q. 851. How long did it take to remove that?

A. We used two mechanics about four hours with a machine.

R. D. Q. 852. All right, sir; what else?

A. And it took there about two and one-half yards to replace it. We had to put the forms back up under it and include the ends of the joists and the beam with a "T" on it, about two and one-half yards of concrete to replace it.

R. D. Q. 853. All right, what else do you find in Captain Feltham's pictures?

A. Have I referred to the windows that were replaced, that was out of place.

R. D. Q. 854. Unless Mr. Julicher insists—I will ask you, Mr. Roberts, if you have gone over with Mr. Clarke all of the details of the type you have described up to his point, involving any defective concrete about which Captain Feltham testified?

A. Yes.

1377 R. D. Q. 855. And told him of the mechanic hours and time involved in removing and replacing it?

A. Yes, sir.

Mr. KILPATRICK. I will state for the record that Mr. Clarke will be examined as to the estimated monetary costs of removing and replacing, having examined the plans on the basis of the information given by Mr. Roberts.

By Mr. KILPATRICK:

R. D. Q. 856. Mr. Roberts, in accordance with your experience was there an unusual amount of defective concrete poured on the Roanoke job?

A. No, sir; there was not.

R. D. Q. 857. Do you remember when Mr. Fahy came to inspect the concrete?

A. Yes.

R. D. Q. 858. Do you remember when Mr. Brown came there from the Veterans' Administration?

A. I do.

R. D. Q. 859. Were you having some trouble at those times in getting good concrete?

A. Yes, sir. Our concrete was rather harsh and to get it to work as we should, we were having some trouble getting good concrete.

R. D. Q. 860. How long did that trouble last?

A. Well, shortly after they were there, we got a more uniform concrete, but the wet and dry part of it was the biggest trouble I was having with the harsh mix.

1378 R. D. Q. 861. Have you furnished Mr. Clarke with your estimate of the time required to remove all of the defective concrete covered by Mr. Fahy's report, Exhibit D-D in this case, and by Mr. Brown's testimony?

A. Yes.

R. D. Q. 862. Did you have under consideration the use of dynamite in the removing of defective concrete?

A. No, sir.

R. D. Q. 863. Did you ever hear of dynamite being used to remove that particular sort of defective concrete?

A. No, sir.

R. D. Q. 864. I ask you to look at Plaintiff's Exhibit 45-A. I call your attention to page two of that exhibit, which sets forth a list of equipment used on the job at Roanoke. I will ask you to check that over and tell us whether or not all of that equipment was there and used on the job.

A. Yes, sir; this equipment was all there and used.

By Mr. JULICHER:

R. D. Q. 865. What are you checking that with, your memory?

A. I know where they were set up.

R. D. Q. 866. You are checking this up by memory? Six years ago?

A. I can tell you what building they were set up in.

Mr. JULICHER. Wonderful.

By Mr. KILPATRICK:

R. D. Q. 867. Mr. Julicher thinks this is wonderful. Suppose you proceed to tell him where all that equipment was used.

1379 The COMMISSIONER. That is in evidence?

Mr. KILPATRICK. No, sir. Mr. Clarke has put this exhibit in as showing the Montgomery record of what was used on the job.

I want Mr. Roberts to show, if he can, what was actually used at the job. Mr. Clarke wasn't actually on the job.

A. Two drum electric hoists, one used on Building Seven and one of them used on Building Six. Steam hoists were used on Building No. 2. Gas hoists were pulled from building to building but used mostly down on Seventeen, and then pulled from building to building as needed. Ingersol-Rand compressor, that was a new one I bought there, was used all over the reservation wherever needed for any kind of cutting. The two mortar mixers were used in connection with making mortar. The Dewalt Woodworking Machine was used at the sawmill. Three electric band saws were used at the sawmill.

R. D. Q. 868. Is the sawmill the same as the place you built the forms?

A. The central fabricating point. These other machines and tools were worked with the others. The two paving breakers used with the compressor, that is what we got those columns out with. That is referred to previously as an air hammer. These other little tools are electric drills, used all over the job for drilling. The Chevrolet sedan was used for getting to and from the job, getting the mail, and whatever was necessary in connection with the job.

R. D. Q. 869. Mr. Roberts, have you had occasion on other jobs to rent equipment comparable to that equipment you had at Roanoke?

1380 A. A part of it.

R. D. Q. 870. Are the rental values stated in Exhibit 45-A, in your opinion, approximately what would have had to be paid for renting equipment of that sort at that time?

A. I think that is a very fair rental. I doubt if I could rent that class of equipment for that money.

Mr. DOYLE. Your Honor please, at the last hearing, March 19, 1940, I had here and had identified by the witness Godbey, record, page 1243, the pay rolls of the Roanoke Marble and Granite Company.

The COMMISSIONER. Is that Plaintiff's Exhibit No. 114?

Mr. DOYLE. Identified as Plaintiff's Exhibit No. 114 up to No. 137, inclusive. I did not at that time offer them in evidence. I desire now, in view of the fact that Government's Exhibits L-L and M-M, prepared by their accountant from these pay rolls, and there seems to be some differences, I desire now to offer in evidence these pay rolls from September 28 to February 15, inclusive, identified on the record, page 1243, as Nos. 114 to 137, inclusive.

The COMMISSIONER. They will be admitted and understood that they are Exhibits No. 114 to No. 137, both inclusive, rather than offered for identification.

(Said pay rolls, from September 28, to February 15, inclusive, fully identified on page 1243 of the record, so offered and received in evidence, were marked "Plaintiff's Exhibits No. 114 to No. 137," both inclusive, and made a part of this record.)

1381 Mr. JULICHER. I understand these are complete for the whole job?

Mr. DOYLE. Complete from that date.

Mr. JULICHER. Is that the entire job?

Mr. DOYLE. No; the pay rolls for the previous weeks, August 13, 1934, and including the week September 22, were actually offered in evidence and are in evidence as Plaintiff's Exhibits No. 109 to No. 113, inclusive, so with these, they are complete.

The COMMISSIONER. No. 109 up to No. 137, both inclusive.

Mr. DOYLE. And I would like at this time to call the Commissioner's attention that attached to certain of these pay rolls are the receipts of the employees with the signature on it, and shows the class of work performed, total hours worked, rate of pay, amount paid, et cetera.

Mr. JULICHER. Are those receipts the usual procedure?

Mr. DOYLE. They are on a form of Algernon Blair, General Contractor, and they have been attached to these pay rolls, and I understand it is the usual procedure.

By Mr. KILPATRICK:

R. D. Q. 872. Mr. Roberts, have you examined carefully the snapshots included in Defendant's Exhibit E for the purpose of identifying each point that was photographed?

A. Yes, sir; I have tried to.

R. D. Q. 873. Could you tell us how many pieces of defective concrete are covered by these forty-five snapshots?

1382 A. It shows eight separate columns and one spandrel beam, and a slab at the top of another column, and I think there are two places where he shows patched concrete walls. That is about the extent of the defective concrete.

R. D. Q. 874. That is a total of twelve different spots, if I added your figures correctly. Yesterday you were testifying about the amount of labor involving the removal and replacing of certain of the defective concrete. Have you made an estimate of the total cost of the labor for removing and replacing all defective concrete on the Roanoke job?

A. I have tried to make a summary of every item that was required to be corrected.

R. D. Q. 875. Have you, in conjunction with Mr. Clarke, worked up a schedule setting out these details and the result?

A. Yes, sir.

R. D. Q. 876. On the Roanoke job were you required to remove any substantial amount of brickwork?

A. Required to remove very little.

R. D. Q. 877. What would you estimate would be the cost of removing and replacing the brickwork you were required to remove and replace?

A. I would think it would be under a hundred dollars.

R. D. Q. 878. In Defendant's Exhibit F-F, which is a copy of a report made by Louis J. Rauber, a special agent of P. W. A., under date of July 12, 1934, Mr. Rauber states that while he was making this investigation, he observed that Mr. Feltham and his assistants found it necessary to order approximately one hundred and fifty feet of brick facing that had been erected to a height of about six feet removed, Mr. Rauber said "as is was not erected according to specifications." The report of Mr. Rauber states that the period of his investigation was from June 26 to July 10, 1934. Were you required to remove brickwork to that extent?

A. No, sir.

R. D. Q. 879. Do you recall Mr. Rauber's visit to the job?

A. I do.

R. D. Q. 880. Did he discuss with you the matter of defective brickwork on this job?

A. No, sir.

R. D. Q. 881. In Defendant's Exhibit G-G, which is a supplemental report by the same investigator, and in which he says the period of the investigation was August 20 to 21, 1934, he sets out at page two that Mr. Dodd told Rauber that during the week of August 20, Dodd had found it necessary to order Algernon Blair to remove the brickwork that had been erected to the height of one floor on one of the buildings. Were you required to remove brickwork to that extent?

A. No, sir.

R. D. Q. 882. Mr. Rauber further reports that Mr. Dodd further advised him the cost of that would cost the contractor about six thousand dollars. How much brickwork would be involved if the removal and replacement of it would cost you six thousand dollars?

1384 A. Do all the brickwork, both face and back-up, on two buildings as large as Seventeen, in my opinion.

R. D. Q. 883. With further reference to the lumber used for scaffolding and concrete forms, about which you testified yesterday, for what other purpose was that type lumber used on the Roanoke job, that type of lumber?

A. It was used to build temporary offices and brick scaffold.

R. D. Q. 884. In building temporary offices, I believe the record shows you built temporary offices for the Government supervisory force and for your force?

A. Yes, sir.

R. D. Q. 885. Was that lumber shipped in by railroad?

A. No, sir; I bought that locally in the early part of the job, when I first arrived there. The Russian Lumber and Brick Company, between Roanoke and the site.

R. D. Q. 886. Did you recall the quantity of lumber necessary to build those field offices?

A. Approximately ten thousand feet.

R. D. Q. 887. Now, the record shows that Redmon Heating Company gave up its work there about June 26, 1934. I believe that is the date. Do you recall how soon after that there were workmen taking up where Redmon left off?

A. Well, it was well up into July before they were able to place men to work of any consequence.

1385 R. D. Q. 888. What was happening between June 26 and this date well up in July that you mention in so far as mechanical equipment work was concerned?

A. Very little happening. Mr. White had a small crew for a few days.

R. D. Q. 889. Mr. White being Redmon Heating Company's man?

A. Yes, doing some electrical work.

R. D. Q. 890. He continued to work?

A. Under the direction of the insurance company and Captain Feltham, I understood.

R. D. Q. 891. That lasted how long?

A. Well, I would say about a week.

R. D. Q. 892. And when did the Virginia Engineering Company come on the job?

A. I don't think I can recall the date exactly, but it was in July.

R. D. Q. 893. Was it before the middle of July or after the middle of July, approximately?

A. It was about the middle of July.

R. D. Q. 894. Who was Virginia Engineering's superintendent on that job? I think the record shows it was Updike.

A. Updike, yes.

R. D. Q. 895. And Mr. White was employed as first assistant?

A. Yes.

1386 R. D. Q. 896. After Mr. Updike got on the job, what was the first thing he did on the job? Tell the Court how Virginia Engineering operated the mechanical work.

A. He took a crew and checked up on each building, the status of the building, and made a list of his needs.

By Mr. JULICHER:

R. D. Q. 897. Do you know these things yourself?

A. I observed them.

R. D. Q. 898. Was he making the list—were you with him all the time?

A. No, sir.

R. D. Q. 899. How do you know those things?

A. I am trying to answer the question.

The COMMISSIONER. He was observing them.

The WITNESS. He was telling me he was emphasizing the immediate needs to have moved by trucks.

By Mr. JULICHER:

R. D. Q. 900. He told you these things, you say?

A. A good many times.

Mr. JULICHER. It is hearsay then.

Mr. KILPATRICK. Are you objecting?

Mr. JULICHER. I object on the ground it is hearsay.

The COMMISSIONER. This was the Virginia Engineering man?

Mr. KILPATRICK. Yes, sir. Virginia Engineering Company came in after Redmon failed and took up Redmon's job.

The COMMISSIONER. This was their superintendent talking to your superintendent on the job?

1387 Mr. KILPATRICK. Yes, and he was a representative of the Government on the job.

The COMMISSIONER. Objection overruled and exception noted.

By Mr. KILPATRICK:

R. D. Q. 901. Proceed, Mr. Roberts.

A. Mr. Updike came to my office regularly in the first stages, trying to plan points that would help me most and trying to plan his work accordingly.

R. D. Q. 902. What size force did he put to work immediately after starting there?

A. Well, he put a very large force to work in some ten or fifteen days. He took hold and I would say he had one hundred and twenty-five to fifty men.

R. D. Q. 903. It appears from the Government log that Redmon had about six men at work on June 26 and Virginia Engineering had something over a hundred, 107, on the first of August. Was the condition of the job so materially changed during that intervening period between the date Redmon quit and August 1, that 107 men were needed where only six were needed before?

A. No, sir; the change had not been sufficient to require more men or very much more than were needed a month previous or six weeks previous to that.

R. D. Q. 904. Did you prepare or have prepared in your office shortly after Virginia Engineering came there a memorandum showing the status of the mechanical work in the various buildings at that time?

A. I had one prepared.

R. D. Q. 905. I hand you a document and ask you if that is the memorandum in question.

A. This is the letter or memorandum which was prepared by Mr. Ellingsworth in my office.

R. D. Q. 906. Was it prepared under your instruction?

A. It was.

R. D. Q. 907. Can you refresh your recollection from that memorandum and give us some details about the conditions existing in some of the buildings there are at that time? Can you do that?

A. Yes, sir.

R. D. Q. 908. What is the date of that memorandum?

A. This is August 7, 1934.

R. D. Q. 910. Tell us the situation in Building No. One as of that time?

A. Building No. One had not been able to start partitions in the basement, and in our judgment at this time there should have been completed with the plaster work going on. That is August 7.

R. D. Q. 911. At what time had you been ready to do that?

A. July 12, we were prepared to start.

R. D. Q. 912. Why didn't you start in the intervening period?

A. No plumbing or heating in the concealed places or in the walls.

R. D. Q. 913. I hand you a photograph and ask you if that represents the general type of construction that was going on at Roanoke.

1389 A. That is showing the fireproof partitions of the type I referred to that were not in place.

R. D. Q. 914. This is not a photograph taken at the Roanoke job; is it?

A. No, sir.

R. D. Q. 914½. But it represents what?

A. It represents or shows the pipes and electrical work being built in tile partitions like conditions at Roanoke.

R. D. Q. 915. And when you speak of the delay of the partitions in the basement of Building No. One, you mean—

A. Those pipes were not in place.

Mr. KILPATRICK. I offer that in evidence as Plaintiff's Exhibit No. 138.

The COMMISSIONER. It may be admitted as Plaintiff's Exhibit No. 138.

Mr. JULICHER. Solely for the purpose of showing pipes in another building?

The COMMISSIONER. Showing from the testimony the condition in the basement of one job.

Mr. KILPATRICK. Illustrating the type of work which the mechanical equipment contractor was required to install in the partitions.

Mr. JULICHER. No objection.

The COMMISSIONER. Plaintiff's Exhibit No. 138.

1390 (Said photograph, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 138," and made a part of this record.)

By Mr. KILPATRICK:

R. D. Q. 916. Now tell us about Building No. 2.

A. Building No. 2, we were ready and planning to start tile work in the basement on July 12, and on August 7 we were still unable to start.

R. D. Q. 917. Why?

A. The mechanical work such as the plumbing and heating and electrical work was not in place.

R. D. Q. 918. What about Building No. 4?

A. Building No. 4 was in the same condition as Buildings No. 1 and 2. We should have had our basement partitions in place.

R. D. Q. 919. And why didn't you?

A. The mechanical work was not in place. We had a definite promise from Mr. Urdike that he would have this ready on August 13.

R. D. Q. 920. What about Building No. 5?

A. Building No. 5 was at a complete standstill.

R. D. Q. 921. For how long had it been at a complete standstill on August 7?

A. From about the middle of June.

R. D. Q. 922. And why had it been at a complete standstill?

A. Well, they didn't have material to carry on nor workmen to carry on in areas where we were striving to start other crafts.

1391 R. D. Q. 923. You did not have material?

A. Redmon didn't have material or men to carry on in all the areas. They were trying to work where it would strike more crafts.

R. D. Q. 924. You say, "They were." Whom do you mean?

A. Updike, when he came there, tried to do it. The others didn't try anyway.

R. D. Q. 925. What about Building No. 6?

A. It was in the same condition.

R. D. Q. 926. As what?

A. No. 5. Held up.

R. D. Q. 927. What about Building No. 7?

A. Building No. 7, the partitions and lathers were held up. We tried to make a start in the early part of June, I believe, in the basement of Building No. 7, and had to abandon that partition work on account of the mechanical work, and we also had exterior brickwork held up because the ends of the building drains over the roof came down in the columns of the brickwork on the porches. That was held up. Held up both exterior and interior on Building No. 7.

R. D. Q. 928. And was that held up in both instances as a result of Redmon's failure?

A. Yes; plumbing work, principally, and electrical work.

R. D. Q. 929. Did you subcontract your tile partition work on Building No. 7?

1392 A. We did.

R. D. Q. 930. Do you know when that subcontractor came there and started his work?

A. I think I mentioned that in this memorandum. I am not sure of that, but he had been there some time.

R. D. Q. 931. Well, go back now and tell us about Building No. 16.

A. Building No. 16?

R. D. Q. 932. Yes. That was one of the Service group, wasn't it?

A. Yes; that was the garage building.

R. D. Q. 933. What was its condition on August 7? I think you will find it about the middle of the second page of your memorandum.

A. I have overlooked No. 16 in reading it. Building No. 16, we had about seventy-five percent of the partitions of the building in Building No. 16 on August 7.

R. D. Q. 934. When had you planned to complete that building?

A. We had planned to complete that building about the first of August; it should have been completed.

R. D. Q. 935. Were you delayed?

A. It was delayed on account of the plumbing and heading. It had some outlet work and other mechanical work concealed in the partitions.

R. D. Q. 936. Tell us about No. 17.

A. No. 17 was standing, just a skeleton frame, until July 13, when we started laying brick there again. The building 1393 at this time was bare inside, had no partitions whatever on the inside of Building No. 17, on account of plumbing not being in place.

R. D. Q. 937. In what condition should it have been on August 7?

A. It should have been fifty percent plastered out.

R. D. Q. 938. Plastered out?

A. Yes, plastered.

R. D. Q. 939. The plastering cannot be done until the partition—

A. That follows the partition work.

R. D. Q. 940. Tell us about Buildings No. 18 and 19.

A. Eighteen and Nineteen had wood stud partitions. We had to abandon these buildings on account of the plumbing and heating. It went in concealed wood partitions. We had to do considerable cutting after Updike came there to relocate spaces for his pipe that wasn't laid out when the building was framed at this time.

R. D. Q. 941. What about the condition of the metal lathing in those buildings?

A. Metal lathing had been delayed since July 10.

R. D. Q. 942. You testified before, I believe, something about the delay on Building No. 13 on account of the mechanical equipment. Had that delay been remedied on August 7?

A. It had not. We had a conference on the day this was 1394 prepared with Mr. Updike in connection with the conveyor equipment.

R. D. Q. 943. Is that the coal conveyor equipment?

A. Yes.

R. D. Q. 944. Building No. 13 was the boilerhouse, was it?

A. No. 13 was the boilerhouse.

R. D. Q. 945. What about Building No. 15?

A. The building was delayed. The partitions in Building No. 15 were held up on account of the plumbing. We had some toilets and other fixtures which should have gone in the walls. We should have been one hundred percent complete.

R. D. Q. 946. What about Building No. 14? Should you have been one hundred percent complete on that date, at that time?

The COMMISSIONER. August 7?

Mr. KILPATRICK. Yes.

A. Yes, we were held up on account of the partitions and the rest of the floors in that building.

By Mr. KILPATRICK:

R. D. Q. 947. I believe you have already testified that as of the time he quit, Redmon had not done any of his outside work. Is that correct?

A. He had not.

By the COMMISSIONER:

R. D. Q. 948. That is correct?

A. Yes.

By Mr. KILPATRICK:

R. D. Q. 949. Mr. Roberts, have you recently examined the plans for Building No. 2 at my request?

A. Yes, sir.

1395 R. D. Q. 950. Could you state about how many sleeves and inserts there were on the first floor of that building?

A. I think I could state positively, approximately five to six hundred sleeves in the hospital building.

R. D. Q. 951. That is Building No. 2?

A. Yes.

R. D. Q. 952. Now, I believe the testimony is all agreed on this point, that Redmon Heating Company had the duty of locating these sleeves and delivering the material to the spot where it was to be inserted, but it was part of your job to insert and build the sleeves in. Is that correct?

A. Yes, sir.

R. D. Q. 953. Will you tell the Court just what work is involved in locating a sleeve?

A. Well, from a center line furnished by the general contractor, they have to take measurements to the various places.

R. D. Q. 954. You say "they," who are they?

A. The electric and plumbing and mechanical contractors.

R. D. Q. 955. All right, go ahead.

A. They have to locate definitely every partition that has a fixture or contact with them, and from that the roughing in of the individual fixtures. They have to measure and mark off the center of each sleeve. We prepare a center line swung above the joints across the center of the building.

R. D. Q. 956. And that is the line from which the mechanical equipment man takes his measure?

1396 A. Yes, he takes his measure off that line.

R. D. Q. 957. Now the actual setting in of the sleeve or building in of the sleeve, does it involve as much time as the locating of the sleeve?

A. No, sir; it takes very little time in fastening it down.

R. D. Q. 958. On a building the size of No. 2, is it necessary or customary to erect all the forms on one floor before beginning the locating of the sleeves?

A. It is not necessary, and I do not think it is customary. It never has been my experience to prepare a whole slab this large.

R. D. Q. 959. If all the forms on one floor were erected before the locating began, have you any estimate as to how long it would take two men to locate all the sleeves on that floor?

A. In my estimate it would take two men possibly twenty-five days; that is, a mechanic and helper.

R. D. Q. 960. Would you give us any estimate on how many men would be necessary to locate all those sleeves in half a day?

A. Forty-five or fifty.

R. D. Q. 961. And Mr. Redmon had, I believe, a half dozen men at work?

A. I never did see that many at work. He had that many on the pay roll, but I never did see more than three.

R. D. Q. 962. Did you furnish Mr. Feltham, from time to time, advance pouring schedules?

A. I did.

R. D. Q. 963. Were you able to adhere to those schedules?

A. I was not.

1397 R. D. Q. 964. Why not?

A. Because of the mechanical work. They never had sufficient men there to allow me to adhere to those schedules.

R. D. Q. 965. Now at the end of January 1934, the end of the first month on this job, your daily report, which is contained in Plaintiff's Exhibit No. 11, indicates no carpenters at work that day. Is that right? On that date you were not building any forms for concrete, were you? January 31, 1934?

A. No, sir.

R. D. Q. 966. If you had had thirty or thirty-five men there on that date building forms for concrete, would that have speeded up the progress of this contract in general?

A. I don't think so.

R. D. Q. 967. Tell the Court why not—the end of January 1934.

A. Well, we would have had no place—for various reasons. The plumbing and heating was not prepared. There was no one prepared to go forward with us and it would be building forms to be damaged and lay up unused.

R. D. Q. 968. Mr. Roberts, on the Roanoke job did you use any carpenters' helpers or apprentices, paying them wages of less than \$1.10 an hour?

A. Not to my knowledge.

R. D. Q. 969. Did you pay less than \$1.10 an hour to any employee who used carpenters tools?

1398 A. No, sir.

R. D. Q. 970. Did either Captain Feltham or Dodd ever tell you that you could employ apprentices or helpers in carpentry work at less than \$1.10?

A. They did not. They told me emphatically I couldn't do that.

R. D. Q. 971. In the daily reports which you have before you there, from what source was the data taken concerning the number and classification of the men at work, the hours they worked, and the amount paid them?

1399 A. We had a time clerk that assembled the time cards, checking up from each foreman, signed by the man and the foreman, that showed his classification, and that was entered on the pay roll the following morning after the day's work. Then each day the report was taken from the men that worked the day before and furnished to Captain Feltham.

R. D. Q. 973. And how often did you furnish him with information as to the number of men on the pay roll?

A. We furnished him that at the end of the week when we furnished him the pay roll.

R. D. Q. 974. In general, what was the numerical proportion between the men on the pay roll and the men worked on a given day?

A. Well, hardly two for one; I would say three to two.

R. D. Q. 975. Well, when you furnished him with a weekly pay roll, what day of the week did you furnish that?

A. Our weekly pay roll, we usually got it to him on Monday, possibly eleven o'clock, Monday morning.

R. D. Q. 976. Covering what period?

A. The previous week through Thursday.

R. D. Q. 977. Then that pay roll you furnished him on Monday morning would include all the men who had been worked during that pay roll week?

A. In any capacity.

R. D. Q. 978. In any capacity?

By the COMMISSIONER:

R. D. Q. 979. That week was seven days, ending with the Thursday prior to the Monday you furnished that information?

1400 A. Yes.

Mr. KILPATRICK. It was a six-day week.

By Mr. KILPATRICK:

R. D. Q. 980. Now, if the Government log shows approximately twice as many men listed on the pay roll as at work on a given

date, could you tell us whether the men listed as on the pay roll did or did not include the men shown as at work?

A. It would include the men at work.

R. D. Q. 981. Mr. Roberts, what was the approximate distance from the central concrete mixing plant to the farthest point on the job where concrete had to be poured?

A. Well, I will have to make that approximately. I would say approximately three thousand feet, but it can be easily taken from the plan, the actual distance.

R. D. Q. 982. I call your attention to Plaintiff's Exhibit No. 10, introduced in evidence, which is a map of the site of this work. Now can you answer my question?

A. The approximate distance from the concrete plant to the farthest point. Is that the question?

R. D. Q. 984. The farthest point where concrete had to be poured.

A. My guess still is close to three thousand feet. That is just a guess.

R. D. Q. 985. How long would it take the concrete truck to cover the distance from the central mixing plant to that farthest point removed that we spoke of, following the road used for that purpose.

1401 A. Three to five minutes.

R. D. Q. 986. Was there any location where the truck would take as much as forty minutes to travel from the central plant to the place of pouring?

A. No, sir.

R. D. Q. 987. How long would it take a man to walk from one end of this job to the other?

A. Five to seven minutes. I have walked it a good many times in less than ten minutes.

R. D. Q. 988. Was it possible for you to tell two hours in advance that you would be ready to pour concrete at any given point on this job?

A. No, sir.

By the COMMISSIONER:

R. D. Q. 989. Why?

A. Well, we were working on a great many areas, in some places trying to pour a short wall, other places a whole slab, and you couldn't plan in advance conditions that might arise to hold you up.

By Mr. KILPATRICK:

R. D. Q. 990. You testified, I believe, you had never been required to give two hours' notice on any job except this?

A. Never have.

R. D. Q. 991. That is true today?

A. Yes, sir.

R. D. Q. 992. You have been on jobs since your Montgomery testimony?

A. Continuously on the job.

R. D. Q. 993. Mr. Roberts, I call your attention to the progress photograph, Building No. 15, as of April 30, 1934. There appear to be two of these photographs included in Defendant's Exhibit O-7. Will you examine those two photographs and tell us if any forms remained to be erected on that building at that time?

1402 A. From this picture there was not unless there is a little pair of steps at the end of this porch.

R. D. Q. 994. Just for a moment, aside from the steps, are you able to say from that photograph that no other forms remained to be built on April 30?

A. I am. This definitely shows that the slab is finished, and it is a roof slab.

R. D. Q. 955. Well, after the roof is finished, the roof slab is finished on that type of construction, there are no other forms to be built with the possible exception of the steps?

A. No forms except there might be steps at the other end.

* * * It is our custom to build the steps in that type of work along with that slab.

R. D. Q. 997. What slab?

A. With the porch slab.

R. D. Q. 998. Which is already completed in the photograph of April 30?

A. Yes. It is always our custom to pour those steps and have the use of them.

R. D. Q. 999. I call your attention to a progress photograph on the same building, July 31. Are those the steps indicated?

A. Yes, sir; those are the steps I have referred to, running on one end of the porch.

R. D. Q. 1000. I ask you to look at progress photograph on Building No. 16, as of April 30. There are two photographs part of Defendant's Exhibit O-10, and I will ask you to tell
1403 us whether or not any forms remained to be built on that building as of that date?

A. The form work is complete on this building.

By the COMMISSIONER:

R. D. Q. 1001. That is equivalent to answering the question by "No"?

A. No.

By Mr. KILPATRICK:

R. D. Q. 1002. Mr. Roberts, were there any interior forms on that building back in that dark space?

A. No, sir; that is a little wall along the edge a little spandrel beam, that goes up about two feet high and possibly thirty inches on the end.

R. D. Q. 1003. Had that beam been poured at the time of this photograph?

A. Yes.

R. D. Q. 1004. Keep that photograph in front of you, Mr. Roberts. Can you tell from that photograph whether any lumber was needed at that building for brickwork at that time?

A. I can tell it was not needed.

R. D. Q. 1005. Explain why.

A. We were doing the brickwork at that time, and we would have built it scaffold high—

R. D. Q. 1006. How high is that?

A. Five feet high, before we would have needed lumber.

R. D. Q. 1007. Then if the Government log and the Government testimony in this case is at that time, April 30, 1934, Buildings No. 15 and 16 were being held up because of lack of form lumber and scaffolding lumber, your testimony is that its not true? Is that right?

A. That is right.

By the COMMISSIONER:

R. D. Q. 1008. That is equivalent to saying "Yes"?

A. Yes, sir.

By Mr. KILPATRICK:

R. D. Q. 1009. If after that date your daily report shows any small items as being charged to forms on Fifteen and Sixteen, what would that indicate?

A. The wrecking of the forms in place.

R. D. Q. 1010. Can you tell from the photographs you have examined that no work was being held up on these buildings on May 7, which is a week later, because of lack of form lumber?

A. I can tell.

R. D. Q. 1011. What is your answer?

A. It was not being held up.

R. D. Q. 1012. Mr. Roberts, during the construction work at Roanoke, did Mrs. Roberts undergo a surgical operation in the City of Roanoke?

A. She did.

R. D. Q. 1013. How long was she at the hospital?

A. About two weeks, I couldn't say definitely.

R. D. Q. 1014. Did she have a normal recovery?

A. Yes, sir.

1405 R. D. Q. 1014. Did that operation keep you away from the job any great length of time?

A. No, sir.

R. D. Q. 1016. Mr. Roberts, you were present when Captain Feltham testified and drew a diagram on the blackboard of two column's and a wall that was improperly installed?

A. Yes, sir.

R. D. Q. 1017. I hand you a blueprint and ask you if that is an accurate scaled drawing of the wall in question and its environs?

A. Yes sir. I checked this drawing against the contract print drawing and that shows exactly as the wall was built.

R. D. Q. 1018. The broken lines indicate the position it was built originally?

A. And the hatched-in lines indicate how it should have been built.

R. D. Q. 1019. Where was that particular corridor in which that wall was built?

A. It was in the end of the corridor next to an unused space in the building.

R. D. Q. 1020. On what floor?

A. On the basement floor.

R. D. Q. 1021. Can you tell us what it would cost to remove and replace that wall, approximately?

A. Fifty to seventy-five dollars.

R. D. Q. 1022. How many workmen were involved in the removal of it?

A. We had six laborers and a foreman removing it.

1406 R. D. Q. 1023. How long would it take?

A. Three to four hours. I wouldn't say definitely how long. It was a very light job and we used the railroad rail in moving it. That is the one you referred to yesterday.

Mr. KILPATRICK. We offer that in evidence as Plaintiff's Exhibit No. 139.

The COMMISSIONER. Subject to verification, it will be admitted as Plaintiff's Exhibit No. 139.

(Said blueprint, showing concrete wall between columns 92 and 93 in basement of Building No. 2, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 139," and made a part of this record.)

By Mr. KILPATRICK:

R. D. Q. 1024. How many floor slabs, Mr. Roberts, were involved in Building No. 6?

A. There was the first, second, and roof slab, and then the basement on the ground slab.

R. D. Q. 1025. Now in what order were those four slabs constructed and poured?

A. First, second, third, and basement, I think was the order.

R. D. Q. 1026. The third is what you mention as the roof?

A. The roof.

R. D. Q. 1027. On that particular building, you did pour the second floor before you poured the roof slab?

A. Yes, sir.

1407 R. D. Q. 1028. *On that particular building, you did pour the second floor before you poured the roof slab?*

A. Yes, sir.

R. D. Q. 1028. Well, if the Government log should contain entries showing that you were erecting forms for the second floor some days after it indicated that you had completed pouring the roof slab, that would be in error, would it not?

A. It would.

R. D. Q. 1029. Mr. Roberts, I hand you three photographs comprising Defendant's Exhibit B, which the record will show was identified by Captain Feltham as illustrative of defective pans on this job and as showing why he required the pans to be bolted. Will you tell us where those pans were located? What building?

A. Building No. 5. This first one is building No. 5, the second floor of Building No. 5. It is so marked. No Building No. 6.

By the COMMISSIONER:

R. D. Q. 1030. Two of them No. 5 and one No. 6?

A. Yes, one No. 6. I missed that.

By Mr. KILPATRICK:

R. D. Q. 1031. Mr. Roberts, were you required to bolt the pans on Building No. 6?

A. No, sir.

R. D. Q. 1032. Were the pans used on Building No. 6 pans which had been used on other buildings prior to that time?

A. Same pans.

1408 R. D. Q. 1033. You started the forming of Building No. 6 for the slab construction after the Virginia Engineering had gotten to work?

A. Yes.

Mr. KILPATRICK. I am leading because that is the testimony of the Government.

By Mr. KILPATRICK:

R. D. Q. 1034. Now, who decided on the location from which those photographs should be taken?

A. Either Captain Feltham or Mr. Dodd. They required that they designate the point for the official photographs to be taken.

R. D. Q. 1035. Who decided the time it should be taken, the time of day?

A. Captain Feltham and Dodd.

R. D. Q. 1036. After those photographs were taken, was there any change made in the form work depicted there before the concrete was poured?

A. No; this was the official photograph to show the status of the forms when poured.

R. D. Q. 1037. And you were not permitted to make any change in them after the photograph was taken, is that it?

A. We would necessarily have to make another picture if we changed any forms.

R. D. Q. 1038. The picture is the last thing you did before you poured the concrete?

1409 A. Shows the true status of the forms.

R. D. Q. 1039. Were any of the pans shown in those pictures actually bolted on this job?

A. No, sir.

R. D. Q. 1040. And the quality of pans, what quality of pans did you use at Roanoke? Were they good, bad, indifferent, or what?

A. They were just standard pans the same as I have always used. I would say they were above the average pan and not as good as a new pan, of course.

R. D. Q. 1041. How did they compare in quality with the pans used on the Atlanta, Georgia, job?

A. I preferred them to the Atlanta pans.

R. D. Q. 1042. And Captain Feltham was inspector there?

A. Yes.

R. D. Q. 1043. Did he require any bolting of pans there?

Mr. JULICHER. I object.

The COMMISSIONER. Sustained. I think we better try this case first.

By Mr. KILPATRICK:

R. D. Q. 1044. Mr. Roberts, I hand you a group of six photographs and ask you if they were taken under your supervision?

A. They were.

R. D. Q. 1945. Where were they taken?

A. I want to be certain. Just a moment. My memory is they were taken at Birmingham.

R. D. Q. 1046. And for what purpose?

1410 A. To illustrate laying this particular bond and joint from the inside of the wall or overhand.

R. D. Q. 1047. That is the method I believe you have testified that you wanted to use to lay the brick at Roanoke?

A. Yes, sir.

Mr. KILPATRICK. We offer these in evidence as being a pictorial representation of men working overhand on the type of bond and joint of the type used on the Roanoke Hospital.

The COMMISSIONER. They will be admitted as Plaintiff's Exhibit No. 140.

Mr. JULICHER. These pictures, however, I don't think depict the actual condition on this job.

The COMMISSIONER. They are not intended to—

Mr. KILPATRICK. No more than your artist picture; simply to illustrate the type of work.

(Said photographs, so offered and received in evidence, were marked "Plaintiff's Exhibit No. 140-a to No. 140-f," both inclusive, and made a part of this record.)

By Mr. KILPATRICK:

R. D. Q. 1048. Will you tell us as to the second picture in the group, which has the letter "G" in the righthand corner, what those men are doing?

A. They are striking the horizontal joint.

R. D. Q. 1049. Just a moment. Will you explain to the Court what "striking a joint" means?

A. Well, they are using the tool—

By the COMMISSIONER:

1411 R. D. Q. 1050. The fellow on the right-hand side of the picture?

A. Is striking what is known as the Homewood joint; the other man is simply holding the level.

By Mr. KILPATRICK:

R. D. Q. 1051. Do brick masons usually work along that close together?

A. In that size panel, it is customary to have two masons.

R. D. Q. 1052. How many courses down is it customary for the masons to strike joints?

A. Five to six courses, as a rule, is about the distance down.

R. D. Q. 1053. And those men are striking the joint how many courses down?

A. The fifth course down.

R. D. Q. 1054. Then the next succeeding picture, which has a "B" in the upper right hand corner.

A. They are striking vertical joints or head joints between the brick.

R. D. Q. 1055. The same is true as to the next picture, marked "F" is it not?

A. They are striking the head joints.

R. D. Q. 1056. The last picture in the group, marked "K"—

A. Is showing a finished wall.

R. D. Q. 1057. Laid from the inside?

A. The same wall these workmen were working on.

R. D. Q. 1058. In laying that wall, looking at the completed panel, your masons could not stand on the ground and work up to that height, could they?

1412 A. No, sir.

R. D. Q. 1059. How did they do that? How did they get up to that height with the system you use here.

A. They would have to have a foot scaffold to get that high.

By the COMMISSIONER:

R. D. Q. 1060. The question now is, how did they do it?

A. They stood on the inside scaffold with the backup tile to lay the last four courses.

By Mr. KILPATRICK:

R. D. Q. 1061. On the building at Roanoke, the way you had planned to do it, working from the inside, you have already testified as to the type of inside scaffolding you would use?

A. Yes, sir.

R. D. Q. 1062. That is covered by your Montgomery testimony?

A. Yes, sir.

R. D. Q. 1063. Mr. Roberts, you have testified you were the superintendent on the Atlanta job?

A. Yes, sir.

R. D. Q. 1064. And I believe your testimony already shows that you laid the brick there from the inside?

A. Yes, sir.

R. D. Q. 1065. I hand you a group of three photographs and ask you if they are pictures of the Atlanta job during the course of—

A. Yes, sir.

Mr. KILPATRICK. We offer these in evidence as Plaintiff's Exhibit No. 141.

Mr. JULICHER. I object to the introduction of that. That is the Atlanta job again.

1413 The COMMISSIONER. You are offering them for what purpose?

Mr. KILPATRICK. For the purpose of showing how bricks were laid from the inside.

Mr. JULICHER. They do not show they were laid from the inside. They might show—

The COMMISSIONER. They have given testimony before showing they were laid that way. This is a photographic illustration tending to confirm that prior testimony. The are admitted solely for that purpose and marked "Plaintiff's Exhibit No. 141."

(Said photographs, so offered and received in evidence, were marked "Plaintiff's Exhibit No. 141," and made a part of this record.)

By Mr. JULICHER:

R. D. Q. 1066. Was there ever any scaffolding here at all on the outside?

The COMMISSIONER. That is in Atlanta?

By Mr. JULICHER:

R. D. Q. 1067. Those photographs you were just looking at.

A. I don't remember any scaffold on the outside. We used what is called suspended scaffolding. I don't remember any.

R. D. Q. 1068. Over on the left-hand side of this photograph it shows some hanging scaffold on the outside, doesn't it?

A. Yes; that is the scaffold I proposed to use at Roanoke. That is the scaffold I wanted to use or requested the use of it.

By Mr. KILPATRICK:

1414 R. D. Q. 1069. I believe your testimony shows you did not propose to lay every brick from the inside. You spoke of spandrel beams. How do you handle the matter of spandrel beams?

A. We have a scaffold that hangs from the floor above, as illustrated on the Atlanta picture. It shows just to the right in this picture. You see it is suspended.

R. D. Q. 1070. You were superintendent for Mr. Blair in the construction of the National Home for Disabled Volunteer Soldiers, in Dayton, Ohio, in 1930, were you not?

A. Yes, sir.

R. D. Q. 1071. Did you use the same type of scaffolding on that job that you proposed to use at Roanoke?

A. Yes, sir.

R. D. Q. 1072. I will ask you if these six photographs are photographs of that Dayton job during its construction?

A. Yes, sir.

R. D. Q. 1073. Are the scaffolds indicated on those photographs the type of scaffolding that you proposed to use at Roanoke?

A. They are clearly indicated on the one marked "A-1" and "A-2."

Mr. KILPATRICK. We offer these as illustrating the type of scaffold which Mr. Roberts said he proposed to use at Roanoke.

The COMMISSIONER. They will be admitted for that purpose only and marked "Plaintiff's Exhibit No. 141."

1415 (Said photographs of Dayton job, so offered and received in evidence, were marked "Plaintiff's Exhibit No. 142," and made a part of this record.)

By Mr. KILPATRICK:

R. D. Q. 1074. Mr. Roberts, in Plaintiff's Exhibit No. 142, the photograph marked "A-3," I see no scaffolding there at all. Will you explain why that is?

A. Working from the inside, the brickmason might commence at the floor or at the top of the beam and work to the beam overhead from each floor.

R. D. Q. 1075. How close can your masons work to that beam, working from the inside?

A. They lay the face work up to within possibly three courses of the bottom of the beam.

R. D. Q. 1076. And then what do they do?

A. They back up solid against the bottom of the beam.

R. D. Q. 1077. How do you complete your facing in front of the beam?

A. The completing is done from a suspended scaffold such as "A-1."

R. D. Q. 1078. Having gotten by that beam, what do you do with the scaffold?

A. Move it to the next floor.

R. D. Q. 1079. And from the beam just passed up to the next beam, how do the men work?

A. They are served from the inside and lay the bricks from the inside.

1416 R. D. Q. 1080. Mr. Roberts, I hand you Defendant's Exhibit D, which you have already identified as pans in place in Buildings Five and Six. Could you tell us whether the openings which are indicated there in the lap of some of those pans would cause leakage of concrete when it is poured?

A. In my experience, it would not.

R. D. Q. 1081. Why not?

A. There is some two to six inch lap and the weight of the concrete going on there, properly mixed concrete, seals itself automatically when it strikes it.

R. D. Q. 1082. I call your attention again to photograph of Building No. 15 as of April 15, about which you testified this morning, and a photograph later on, July 31. I believe, which shows the steps. Now, look at the picture of April 30. Is there enough lumber lying around on the ground there to form those steps?

A. Ample.

R. D. Q. 1083. How many men ordinarily would be employed in building the forms for those steps?

A. One carpenter and a helper or laborer.

R. D. Q. 1084. How long would it take those two men to build the forms for the steps?

A. An hour and a half to two hours.

R. D. Q. 1085. Getting back to the question of scaffolding, why didn't you use the suspended outside scaffolding at Roanoke?

1417 A. The suspended outside scaffold is really not suitable for one- and two-story buildings. Then too they are patent scaffolds and very expensive.

R. D. Q. 1086. Why aren't they suitable for one- and two-story buildings?

A. The cost for installing them on one- and two-story buildings is too great.

R. D. Q. 1087. I show you Defendant's Exhibit Y, which was introduced through Captain Feltham as illustrating the type of scaffolding which you might have used at Roanoke to lay the brick from the outside, and I ask you, if in using that type of scaffolding, you would have spent less money than the type you did use?

A. I cannot see much difference in this scaffolding and scaffolding all the way. The areas where no scaffold is shown must have had a scaffold when they were passing them. I am unable to tell what they used at that point.

R. D. Q. 1088. Mr. Roberts, I believe the record shows that you entered into a contract with the carpenters' union the latter part of June 1934, is that correct?

A. Yes.

R. D. Q. 1089. Why didn't you make a contract with the union at the outset of the job?

A. Well, we were doing mostly open shop work at that time, and we planned on doing it under the regulations that are set forth under the P. W. A. rules, which would permit us to use helpers and semiskilled labor in our form work, and—

1418 R. D. Q. 1090. Then when you came to end of June, 1934, the Government superintendents had already ruled that you could not use these helpers prior to that time?

A. Yes; they had ruled that and enforced the rule.

R. D. Q. 1091. Mr. Roberts, Defendant's Exhibit G-G, which is a supplemental report of Investigator Rauber, contains the following recommendation:

"It is recommended that Algernon Blair, Contractor, be debarred from bidding on future contracts under the P. W. A. It

is further recommended that he be relieved of his contract for the erection of the Veterans Administration Facility at Roanoke, Virginia. It is further recommended that the facts regarding the contracting for labor by Algernon Blair, Contractor, in violation of the Code of Fair Competition for the Mason Workers Industry be furnished the Code Authority of the National Industrial Recovery Administration. It is recommended that the facts in this case be presented to the United States Attorney at Roanoke, Virginia, for his opinion as to whether prosecutive action will be instituted, with particular reference to the submission of certified pay rolls by Algernon Blair, contractor, when the prescribed rates of wages have not been paid."

That report, which contains that recommendation, contains statements to the effect that Mr. Blair had contracted for the masonry only on the brickwork at the Roanoke job in violation of the law. It contains other charges of violation of his contract there and the charges which we discussed this morning about the removal of \$30,000 worth of concrete and \$6,000.00 worth of brickwork.

Have you ever seen these written charges before they were presented by Government counsel here?

A. No, sir.

R. D. Q. 1092. Have you ever heard of such charges having been made?

A. I have heard extracts read from it.

R. D. Q. 1093. By whom?

A. Colonel Hackett.

R. D. Q. 1094. Who is Colonel Hackett?

A. Head of Public Works here in Washington.

R. D. Q. 1095. Will you tell the Court the occasion on which you heard Colonel Hackett read those extracts and what occurred?

A. Some time the following year after we finished Roanoke, Mr. Blair asked me to join him and Mr. Clarke and Mr. Devinney in Atlanta to come to Washington in connection with certain charges that had been preferred against us.

R. D. Q. 1096. Did you do that?

A. I did.

R. D. Q. 1097. And what happened when you got to Washington.

A. We reported to Colonel Hackett's office and what took place in the office was that we asked to present our side of the—to answer the charges that had been preferred against us, and Colonel Hackett held the charges or paper in his hands and read from that certain extracts that stated that Dodd had sworn that we removed \$30,000.00 worth of concrete, I believe, was one

item, and that we removed \$6,000.00 worth of face brick because it was erected not in accordance with specifications, that we had employed—that we were not paying the wages stipulated in our contract for steel workmen, reinforced steel workmen, and that we had destroyed our records, our time records. I believe that is the only thing I remember that he read directly from that, and each thing he referred, “according to Dodd’s sworn statement, this is true.”

R. D. Q. 1098. Then did you and your associates present your answer to those charges?

A. Yes, sir; we answered each charge.

R. D. Q. 1099. And what happened as a result of that?

A. He asked us to come back. That was just before noon. He asked us to come back after lunch, and he would make his decision. We were back in his office at one-thirty or two o’clock.

R. D. Q. 1100. Did he announce his decision?

A. Yes, sir; he announced his decision. We were completely exonerated in every case and the contracts held up would be awarded.

R. D. Q. 1101. Some of your contracts were being held up because of these charges?

A. One was being held up at Nashville, Tennessee, Sylvan Park School.

The COMMISSIONER. Whose report was that, Mr. Kilpatrick, those charges are in?

1421 Mr. KILPATRICK. They are in Defendant’s Exhibit F-F and G-G.

Mr. JULICHER. Dodd.

Mr. KILPATRICK. Rauber, the P. W. A. investigator, reports Dodd made these charges to him.

The COMMISSIONER. Has either of them been a witness?

Mr. KILPATRICK. We have stipulated if Rauber were here, he would testify to what is in these reports. Dodd has testified, and I think you will find he has denied any such statement. We simply want to show the facts about these statements.

The COMMISSIONER. All right.

By Mr. KILPATRICK:

R. D. Q. 1102. Mr. Roberts, in connection with the charges about destroying time cards, you have this morning explained what those time cards were, from which daily reports and pay rolls were made up. Why didn’t you keep those time cards indefinitely?

A. Well, it has never been our custom to keep them. They are made solely to help us keep a cost system and daily time is entered daily on a time sheet, and we preserve those to keep the time and cost.

R. D. Q. 1103. How long did you keep those cards?

A. We usually keep those cards from three to four weeks.

R. D. Q. 1104. For what purpose?

A. If there is any question in regard to a man's time it will come up in that time, and we have his card that he has signed and agreed to before the time was turned in.

1422 R. D. Q. 1105. There was one card for each workman for each day that he worked, is that right?

A. Yes, sir.

R. D. Q. 1106. What was your force there? How big? Your own employees, not counting the subcontractors.

A. I wouldn't say definitely. Seven or eight hundred people, possibly a thousand at times.

Re-cross-examination by Mr. JULICHER:

R. X Q. 1107. You always make it a little higher than what it really is, don't you? You said 107 and now you say a thousand and it turns out to be seven hundred. Seven hundred is correct, isn't it?

A. I wouldn't say.

Mr. KILPATRICK. Your daily reports in evidence would show the number.

By Mr. JULICHER:

R. X Q. 1108. How much local lumber did you say you used on this job?

A. Immediately after arriving at Roanoke, I bought some ten thousand feet. I don't remember the exact amount, enough to build all temporary offices.

R. X Q. 1109. Weren't you supposed to use as much local material as you could to comply with the contract?

A. We were supposed to comply with the contract.

R. X Q. 1110. When you set up forms for pouring concrete how long do you suppose they could stand without suffering from the weather, warping and getting out of line?

1423 A. Rain and sunshine will put them out very quick. Rain in the morning and sunshine in the evening will warp and twist them very bad in two or three days' time.

R. X Q. 1111. In two or three days' time. That is the regular form lumber you are talking about now, isn't it?

A. Yes, sir.

R. X Q. 1112. You looked over those snapshots that are Defendant's Exhibit E and and you said they showed about twelve different instances of faulty concrete, isn't that so?

A. That is about correct.

R. X Q. 1113. As a matter of fact, there were quite a few others than what is shown here? These do not show all of them?

A. These show all except one beam that I know about.

R. X Q. 1114. Then you say this shows all except one instance of defective concrete, these photographs?

The COMMISSIONER. Is that a statement or a question?

Mr. JULICHER. A question.

A. All that were required to be removed and corrected.

By Mr. JULICHER:

R. X Q. 1115. I show you snapshot of this Defendant's Exhibit E marked No. 41; what does that show?

A. That shows footings poured and is marked as a progress picture and not defective concrete. A progress picture.

R. X Q. 1116. There were instances, however, where there was defective concrete in the footings that had to be taken 1424 up, wasn't there?

A. No, sir.

R. X Q. 1117. Are you sure there wasn't? Are you sure you did not have an air compressor there all one Sunday taking up footings that were defective?

A. Not that were defective. Four footings that were mislocated, they were removed, but not defective in any sense.

R. X Q. 1118. I show you snapshot No. 5 and ask you what that says?

A. Is this No. 5?

R. X Q. 1119. Yes.

A. That shows the spandrel beam.

R. X Q. 1120. A spandrel beam?

A. That has been cut out.

R. X Q. 1121. The spandrel has been cut out?

A. Leaving the exposed end of the joist.

R. X Q. 1122. What would be the reason for that kind of work, defective work?

A. Well, there would be various reasons. In that particular beam, it was projected out into the brickwork and cut out to get it back in line. I think that is the beam.

R. X Q. 1123. How would you cut that out?

A. Cut it out with drill and compressor.

By Mr. KILPATRICK:

R. X Q. 1124. Is there any difference between a drill and an air hammer?

A. We call them the same thing. We use the paving breaker and drill. Same thing.

1425

By Mr. JULICH:

R. X Q. 1125. I show you photograph No. 6. Doesn't that show that that same spandrel beam has been removed?

A. Yes, sir; that is the same beam.

R. X Q. 1125½. And doesn't it show a column in the background there that had been taken out?

A. Yes, sir; the column is also shown in another picture there.

R. X Q. 1126. You have said that the amount of concrete that had to be removed because it was defective was very small, isn't that true?

A. Yes, sir.

R. X Q. 1127. As a matter of fact, it would be a reflection upon you if it had been a large amount, wouldn't it?

A. I don't think so.

R. X Q. 1128. Since you were the general superintendent, aren't you responsible for all the work done there?

A. Yes, sir; I am responsible for it.

R. X Q. 1129. Is it a usual thing to have defective concrete in every job?

A. I wouldn't say it is the usual thing, but we very often have a column or a beam, something happens to it, very often. I had one column on the Atlanta Hospital, one column.

R. X Q. 1130. Why should you have any defective concrete?

A. Well, there are various things that could happen in pouring concrete that might develop into bad results.

R. X Q. 1131. For instance, what? Poor workmanship?

1426 A. Setting too much or not enough; vibrating too much or not enough. Either one might do that.

R. X Q. 1132. Where did you get this information that you gave Mr. Clarke with reference to the defective concrete?

A. Went over our records as to what we did repair and did cut out.

R. X Q. 1133. Do your records show what you did cut out and what you had to replace?

A. The records would show anything without it was some minor thing that simply had to be pointed up.

R. X Q. 1134. You kept it in your regular daily log or separately or how did you keep it.

A. Well, we have—in this case, we have letters directing us to cut certain columns and certain beams which is in evidence, I think.

R. X Q. 1135. In every instance you were ordered in writing to cut out defective work?

A. Yes; and in some instances where we didn't cut out because it was accepted as meeting the requirements without cutting out in some instances.

R. X Q. 1136. It was first condemned and okayed afterwards?

A. Yes, sir.

R. X Q. 1137. Where did that happen?

A. I don't think I could point out the definite places but quite often that happened.

1427 R. X Q. 1138. Quite often; not just once or twice. You said you had an Ingersoll Rand Compressor on that job?

A. Yes, sir.

R. X Q. 1139. Where did that come from?

A. I brought it in Roanoke.

R. X 1140. Do you remember what you paid for it?

A. Nineteen hundred dollars.

R. X Q. 1141. It wasn't seventeen hundred, was it?

A. I couldn't answer that question definitely. It was about fifteen hundred and less than two thousand.

R. X Q. 1142. Seventeen hundred. Didn't they sell it at the conclusion of this job?

A. No, sir, we still have it.

R. X Q. 1143. It wasn't sold? You still have it?

A. Yes.

R. X Q. 1144. It wasn't sold for two hundred dollars?

A. I don't think so.

R. X Q. 1145. You don't think so?

A. No, sir; it was not.

R. X Q. 1146. These computations that you made with reference to the cost of tearing out and replacing certain defective concrete, that doesn't take into consideration any time that was used, does it?

A. What is that?

R. X Q. 1147. I mean particularly the time and delay to other workers doing other things and such as might enter into your overhead cost.

1428 A. Not the delay in other work. I didn't make the computations. I assisted Mr. Clarke in computing the cost.

By Mr. KILPATRICK:

R. X Q. 1148. Mr. Roberts, is this the computation which you and Mr. Clarke made up showing the cost of removing and replacing defective concrete work on the Roanoke job?

A. Yes, sir.

Mr. KILPATRICK. I offer that in evidence.

The COMMISSIONER. It will be marked "Plaintiff's Exhibit No. 143."

(Said computation, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 143" and made a part of this record.)

Br. Mr. JULICHER:

R. X Q. 1149. Where did the information that you have set out here come from? The information that was gathered from some source to make up this report.

A. We took the columns that was to be removed, and we figured the size of them. We know the time required in connection with replacing them.

R. X Q. 1150. And where did you get this information? Where did you find it? Where did you have it?

A. We found from letters and from the plans the columns and from photographs and the various records designating the columns that was removed.

1429 By Mr. KILPATRICK:

R. X Q. 1151. Did you examine Mr. Fahy's report, Defendant's Exhibit D-D?

A. I did; which outlines the work that was required to be cut out and to be replaced.

By Mr. JULICHER:

R. X Q. 1152. Do you remember what work that was?

A. Do I what?

R. X Q. 1153. Remember what work his report required you to cut out?

A. He required seven columns in Building No. 2, it is my memory now; one section of floor slab designated at certain columns, I believe; and two spandrel beams, my memory is now.

R. X Q. 1154. You said a minute ago you did not have to replace any footings, is that correct?

Mr. KILPATRICK. He didn't say that.

A. I said we did not remove footings on account of inferior concrete.

By Mr. JULICHER:

R. X Q. 1155. Inferior concrete spaces that were defective?

A. They were not defective.

R. X Q. Misplaced?

A. Mislocated.

R. X Q. 1157. Mislocated?

A. Yes.

R. X Q. 1158. Where did these amounts come from that are included with this report?

A. The money or the quantities of materials?

1430 R. X Q. 1159. The amount of money.

A. Figured from the amount of work and the amount of concrete in each case and the amount of forms added together.

R. X Q. 1160. Would you say they were accurate?

A. They were. We gave in every case; we gave more. In most of the cases we added some for small areas where it cost us to pour a dollar to pour concrete per yard, and in big areas we added quite a bit on account of the small volume to replace at these locations.

R. X Q. 1161. Now, I see that you have an item here that includes replacing forms, eight columns, at \$2.50, \$20.00. Does that item include the lumber used for the forms?

A. No, sir.

R. X Q. 1162. Why not?

A. The column sides are just taken off. They are made in four sections. They are set off and set back up with patent clamps. We used the same forms as used previously.

R. X Q. 1163. Wouldn't that be warped by wetting and drying?

A. No, sir; we use them over and over.

R. X Q. 1164. Does that include the cost of taking out the defective columns?

A. No; we have another item for taking out the defective columns.

R. X Q. 1165. Where would that be? You have the exhibit right before you.

A. Well, we have one mechanic cutting crew at \$1.10 per hour, one laborer at forty-five cents, air hammer at twenty cents
1431 an hour, air compressor at seventy-five cents an hour, making the total of \$2.50 per hour, and then we have fifty-one hours, at \$2.50 an hour, for cutting out those columns, I believe is the way I see it here.

R. X Q. 1166. And this information, you say, was taken from the records that were made in Roanoke at the time? Various records, photographs, et cetera?

A. Columns cut out were taken from various records, photographs, letters, and Fahy's report and from knowledge of the job all combined.

R. X Q. 1167. Isn't it a fact, Mr. Roberts, that the contractor, in preparing his bid, neglected to include the brickwork for one building?

A. It is not a fact, to my knowledge, and I think I know the facts.

The COMMISSIONER. You have to know.

The WITNESS. I know them.

By Mr. JULICHER:

R. X Q. 1168. Mr. Roberts, when you were preparing to put up your brickwork, do you remember what Captain Feltham or Mr. Dodd said to you with relation to putting up the brick?

A. When we started our brickwork, he immediately asked us with reference to exterior scaffolds.

R. X Q. 1169. He asked you what you were going to do about them?

1432 A. Our plans for exterior scaffolds. I told him my plan was to lay the brick overhand from the inside, and he stated that we could not lay the brick from the inside and make the bond that he would approve. It would have been necessary that we carry that outside independent scaffold.

R. X Q. 1170. That was a departure from the contract, wasn't it?

Mr. KILPATRICK. I object. It calls for a conclusion and construction of the contract.

The COMMISSIONER. I don't think that is the purpose. I overrule it.

By the COMMISSIONER:

R. X Q. 1171. Did you consider it a departure from the contract?

A. I considered it a departure from the contract.

By Mr. JULICHER:

R. X Q. 1172. Did you file a written protest?

A. I filed a good many verbal protests.

R. X Q. 1173. A written protest?

A. I don't think I filed a written protest.

R. X Q. 1174. Why didn't you file a written protest? The contract directs that you should; doesn't it; in case you have any complaint?

1433 A. He told me he couldn't make me do it, but he would make me wish I had, but under the contract he couldn't make me do it. He proved to me what he meant when he said that.

R. X Q. 1175. By what?

A. By demanding that the head joints or the header would be as close as an eighth of an inch to the stretcher below it when the brick varies as much as three-eighths of an inch.

R. X Q. 1176. What is wrong with doing that? Why couldn't you do that?

A. Because it is impractical and impossible, almost impossible, without you measure each individual brick and lay a line on it and mark the centers of it. The brick was an imitation hand-made brick and varied considerably and out of square.

R. X Q. 1177. And you were afraid to make your demands then for the proper thing under the specifications?

A. I was afraid after he had worked with me. The scaffold was around one or two buildings and showing what he demanded of it.

R. X Q. 1178. Who was it that said that? Captain Feltham?

A. Captain Feltham and Dodd.

R. X Q. 1179. Captain Feltham and Dodd, both of them?

1434 A. Both of them.

R. X Q. 1180. Tell me what happened relative to the incident in which you wanted to insert a two by four in place of a row of brick that you did not have handy.

A. That was a special cove hand-made brick. It starts off from the wall, where it sets in some two or two and one-half inches, and then out, and the cove brick only projects under the other wall, in my memory, less than an inch or around one inch, and sitting on a shelf for the other brick, to start off from the edge of it, those bricks we considered would be damaged badly there and could be placed as well afterwards.

R. X Q. 1181. You considered it could be placed as well afterwards?

A. Yes; quite often—

R. X Q. 1182. You proposed to put a two by four in there, and Captain Feltham told you you couldn't do it?

A. Yes.

R. X Q. 1183. Because it would not have sufficient bond?

A. I don't think he said that. He didn't give his reason. He wouldn't permit it. I don't think he ever gave me his reasons except it was unheard of, and he would not permit it, something to that effect.

R. X Q. 1184. How many pans did you actually bolt on that job, do you remember? I don't mean to be as specific as that.

In how many buildings were you required to bolt pans?

1435 A. Seven, One, Four, Two, Sixteen, Fifteen, and Fourteen, I believe.

R. X Q. 1185. About half the buildings?

A. Practically all of the buildings. And Seventeen. I did not include Seventeen.

R. X Q. 1186. Did you ever protest against bolting the pans?

A. A great many times.

R. X Q. 1187. In writing?

A. I couldn't answer that. I think I did.

R. X Q. 1188. Did you say you did not have to bolt any pans after the end of July?

A. I did not bolt any pans after Virginia Engineering went to installing the work in keeping with my work.

R. X Q. 1189. That was the middle of July?

A. That was the middle of July.

R. X Q. 1190. After the middle of July you did not bolt any more pans?

A. That is right.

R. X Q. 1191. Isn't it true that grout was leaking out of your pans?

A. I didn't consider it so.

1436 R. X Q. 1192. What do you mean, you didn't consider it so? Could you see it or couldn't you?

A. Colored water. You can't hold water with anything. No pan will hold water.

R. X Q. 1193. Was there any grout?

A. Not more than any work I ever erected; a slight amount of grout everywhere; sand more than grout.

R. X Q. 1194. I show you Plaintiff's Exhibit No. 140. This shows construction of a brick wall. Is that Flemish bond there?

A. Yes; the same bond we had at Roanoke.

R. X Q. 1195. What is the thickness of that?

A. Twelve inches.

R. X Q. 1196. With fill behind it?

A. Tile.

R. X Q. 1197. Is that the same construction you used at Roanoke?

A. Same construction we used at Roanoke.

R. X Q. 1198. Could this have been built from the front as well as back as these men are shown?

A. Could have.

R. X Q. 1199. These photographs do not show any spandrel beams to work around?

A. They do not.

R. X Q. 1200. Just straight face windows and no spandrel beams? It just shows Flemish bond?

1437 A. It just shows the method of overhand work and striking that joint.

R. X Q. 1201. These pictures were taken for the purpose of this hearing?

A. They were taken to demonstrate doing that type of work.

R. X Q. 1202. Does the size or type of brick make any difference in the facility for laying brick by the overhand method?

A. The size and type of brick?

R. X Q. 1203. You said before that some of these bricks were various sizes and shapes. Some of them were half an inch to three-quarters of an inch different?

A. Yes, sir.

R. X Q. 1204. Does that make any difference in laying the brick by the overhand method?

A. No, sir.

R. X Q. 1205. You say you can line up this brick just as well from the inside as the outside?

A. I think you could line it better, because the mason is directly in line with his joint, looking down his joints. His eyes are immediately over the joint.

R. X Q. 1206. How do you figure that?

A. Standing over the wall, and as he get over, his eyes are looking down over it.

1438 R. X Q. 1207. He would stand the same way from the outside.

A. No. He is looking down over it from the inside and is in a better position to sight his joint.

1207. He would stand the same way from the outside.

R. X Q. 1208. It is a question of whether you can see better from the inside or outside?

A. Plumbing the joint, I am talking about.

R. X Q. 1209. You still use your level to plumb the joint, don't you?

A. No; just his eye, and checks with the level from time to time.

R. X Q. 1210. He doesn't check after every row?

A. When he gets a header high, then he checks with his level.

R. X Q. 1211. Then, as I understand it, you proposed to put an outside scaffold around each spandrel beam as you went up. Is that the way?

A. Yes.

R. X Q. 1212. You had to use some scaffolding for that?

A. Yes, sir; about the spandrel beams.

R. X Q. 1213. And that necessitated constructing this or removing it each time at each spandrel beam as you went up?

A. Yes, sir.

R. X Q. 1214. Is there any expense connected with that?

A. Yes; we make up that work all the way through a job.
1439 We make those up with the brackets and hang them from four-by-fours that project back into the building and are held in place by a four-by-four from the slab down to the back end of that.

R. X Q. 1215. Do you have a carpenter to move it every time, or a bricklayer move it?

A. Bricklayers' helpers move it as they move around.

R. X Q. 1216. Bricklayers' helpers do it?

A. All they have to do is to kick out the four-by-four and fasten it back up where it is required.

R. X Q. 1217. Is that the plan you proposed to Captain Felt-ham at the time?

A. Yes.

R. X Q. 1218. That was the method you were going to use. You had not intended that the brick was going to go up around the spandrel beams, laying the brick from the inside?

A. No; I never planned to lay the brick around the spandrel beams from the inside.

R. X Q. 1219. You say that plan was proposed to Captain Feltham and Mr. Dodd?

A. Yes, sir.

R. X Q. 1220. At the time of this Roanoke job, did the Algernon Blair Company employ any union men?

A. Yes; I have been working with union men ever since I have been with Mr. Blair.

1440 R. X Q. 1221. In what trade?

A. Principally masons.

R. X Q. 1222. And you have helpers working with the masons?

A. Brick masons and labor.

R. X Q. 1223. Did you use semiskilled workmen for building forms on this Roanoke job?

A. No, sir.

R. X Q. 1224. You used regular skilled workers, at \$1.10 an hour?

A. \$1.10 per hour.

R. X Q. 1225. Do you know whether that is the usual custom?

A. It has not been the usual custom.

R. X Q. 1226. It has not been. Is it now?

A. Some place. It is now.

R. X Q. 1227. Well, is it the custom in Montgomery, Alabama?

A. In Montgomery, Alabama, we use apprentices and carpenters.

R. X Q. 1228. You use skilled mechanics with apprentices to build the forms?

A. We use skilled mechanics and helpers.

R. X Q. 1229. I think you said, Mr. Roberts, that Mr. Dodd and Captain Feltham refused to permit you to use semiskilled workers; is that correct?

A. Yes, sir.

R. X Q. 1230. That was in all the trades?

1441 A. Yes, sir.

R. X Q. No apprentice bricklayers or carpenters?

A. Not to my knowledge. I don't remember a single case. Possibly one; I don't remember, but I think not.

R. X Q. 1232. And when they refused you permission to use these semiskilled workers, did you protest? Did you file a protest in writing?

A. I am sure I filed a protest in connection with the reinforcing steel, I think, and I had orders—I started out using semiskilled on reinforcing steel and had orders to pay up and pay them back pay up to \$1.10 per hour for all work they had done in handling the steel.

R. X Q. 1233. Do you mean that you used semiskilled workers on the reinforcing steel?

A. Started out to; yes, sir.

R. X Q. 1234. You started out to. Is that the usual practice?

A. Yes, sir.

R. X Q. 1235. You mean that the reinforcing steel worker is not a skilled worker?

A. He was classed as a semiskilled, and under our method of securing labor at Roanoke, which was through the National Employment Office, they had nothing but semiskilled, and so 1442 stated to me they had nothing but semiskilled to do that kind of work.

R. X Q. 1236. Were you bound to use semiskilled labor in that case?

A. I was bound to use local men or men secured through that office.

R. X Q. 1237. Whether they could do the work or not?

A. In a great many cases; yes.

R. X Q. 1238. Are you sure that is what you were forced to do? Whether they could do the work or not, you had to use the men they gave you?

A. I did or be punished severely.

R. X Q. 1239. By whom?

A. By Captain Dodd and Feltham. Usually if we laid a man off, his foreman was called in and told that there would be some other laying off and better give that man a job back. Call them in and question them for half a day for laying a man off for incompetence or anything else.

R. X Q. 1240. Suppose a rodman tied up his reinforcing steel, would you pay him sixty cents or a dollar ten?

A. We paid him a dollar ten.

R. X Q. 1241. Is that the way you started out, paying \$1.10?

A. We started out paying sixty to eighty cents, all depending on the ability the man had to be shown what to do.

R. X Q. 1242. He was doing a skilled worker's job?

1443 A. He was attempting to do a skilled worker's job.

R. X Q. 1243. The work was done, wasn't it?

A. No, sir.

R. X Q. 1244. You got the steel in, didn't you?

A. We got quite a bit in until we started paying \$1.10.

R. X Q. 1245. You started paying \$1.10 and got the steel in?

A. We started out paying sixty cents an hour, and it took a good deal more supervision to teach these men, costing us fully \$1.10 for the work on account of the amount of work we were getting per man.

R. X Q. 1246. Well, I understand that skilled workers are supposed to get \$1.10 an hour, isn't that true?

A. Certain classes of steel work call for \$1.10.

R. X Q. 1247. A man who is a rodman and sets reinforcing steel is a skilled worker, isn't he?

A. It was so considered in all cases. Then it was set up that a rodman was a semiskilled worker.

R. X Q. 1248. Do you know whether or not a rodman is a skilled worker in Birmingham, Alabama?

A. He is by the unions.

R. X Q. 1249. And you were using nonunion men?

A. Yes, sir.

R. X Q. 1250. But you decided that that was not a skilled 1444 trade, so you paid him sixty cents an hour. Is that what it was?

A. That wasn't the cause of the decision. They had no skilled men but insisted the head men could be taught easily and classed as semiskilled.

R. X Q. 1251. They were doing a skilled job, weren't they?

A. The local employment office requested that we use their semiskilled men and give them an opportunity to learn to be skilled men.

R. X Q. 1252. And what happened then? Did Captain Feltham and Mr. Dodd order you to pay them \$1.10 an hour?

A. When this was first brought up, Captain Feltham agreed with me it should be handled that way and work local men; but shortly after we started, some two or three weeks, I wouldn't say definitely, I had a written order one morning to pay all men doing steel work, regardless of classification, \$1.10 an hour and for back time. I complied with that the same day I received the order and paid all of them.

R. X Q. 1253. And did you file any written protest?

A. I am not certain about how far a written protest was carried. I did to Captain Feltham.

R. X Q. 1254. You filed a written protest to him?

A. I think I did.

1445 Mr. JULICHER. There doesn't seem to be any in the record.

Mr. KILPATRICK. If you are talking about the record, there is a ruling on it.

Mr. JULICHER. That does not necessarily follow.

The Witness. Shortly after my letter to him I received the ruling from Washington through him.

By Mr. JULCHER:

R. X Q. 1255. That ruling was made by the Labor Department, wasn't it?

A. That is what they stated.

R. X Q. 1256. Didn't you see the ruling they made?

A. I think I had it simply—I don't think I was furnished with their ruling. I don't think I was. I think I was furnished with a letter from Captain Feltham and he had the ruling.

R. X Q. 1257. Didn't he set out in his letter what the ruling of the Labor Department was and stating what that ruling was?

A. He said the Labor Department had ruled that was \$1.10 an hour.

R. X Q. 1258. Under quotes? Didn't he put it in quotes in his letter?

A. I couldn't answer.

1446 R. X Q. 1259. Mr. Roberts, did you call for Mr. Andrews and Mr. Ellingsworth to come to help you?

A. I think I asked for them some two or three times.

R. X Q. 1260. Why?

A. Well, there was so many matters that I couldn't understand the nature of the rulings and requirements that I felt like additional technical help and work with them might help us to carry on our work better.

R. X Q. 1261. And you asked for them to come up there to help you?

A. To assist me; yes, sir.

R. X Q. 1262. After they got up there, what did they do?

A. Well, they done their best to help me.

R. X Q. 1263. You didn't have them checking any hardware up there, did you?

A. I would never designate such a job for them. One of them might have volunteered to check some hardware or some problem in connection with hardware.

R. X Q. 1264. You didn't have them working on the job around there doing much the same as were Mr. Durden, J. T. Roberts, and W. G. Ireland? They were all superintendents, weren't they?

1447 A. They were all superintendents. These other men were more in an advisory capacity in engineering problems and drawings and taking matters up directly with Captain Feltham and Dodd.

R. X Q. 1265. And you called them up because you couldn't handle it. Is that the way it was?

A. I called them because I wasn't handling it to my own satisfaction and apparently to theirs.

R. X Q. 1266. You had quite a number of subcontractors on this job, didn't you?

A. Comparatively; not many for a job of that size.

R. X Q. 1267. The Roanoke Company are the only ones that have complained; isn't that so?

A. The Roanoke Marble and Granite Company?

R. X Q. 1268. The Roanoke Marble and Granite Company.

A. No; we had considerable complaints from the Virginia Bridge Company.

R. X Q. 1269. And do you know whether or not the Blair Company paid out any claims made by those subcontractors?

A. To the best of my knowledge, we did. I am not positive of that.

R. X Q. 1270. Do the records show that?

A. They should. I don't know that.

R. X Q. 1271. Have you looked over the plaintiff's itemized costs which have been offered as exhibits here?

1448 A. No, sir; I have never looked over them.

R. X Q. 1272. How many independent contractors were there on this job?

A. That would be hard to make a definite answer without the records before me. I can name the principal ones.

R. X Q. 1273. Who were they?

A. Virginia Bridge Company.

R. X Q. 1274. I thought that was a subcontractor.

A. I thought that was what you asked.

R. X Q. 1275. I asked you for the independent contractors.

A. Independent contractors; no.

By the COMMISSIONER:

R. X Q. 1276. Can you recall any independent contractors?

A. Nothing except Redmon and the tank people. I don't recall the ones who built the tanks, their names. Those are the only two contractors and I cannot call their names.

By Mr. JULIHER:

R. X Q. 1277. This exhibit, Plaintiff's Exhibit No. 143, does not include any delay for defective work by subcontractors; does it?

A. No, sir.

R. X Q. 1278. In cutting out these columns, did you have to take out the reinforcing steel that had been placed there
1449 too, or did you leave the steel?

A. We left the steel and took the concrete out.

R. X Q. 1279. Did you have to clean it?

A. No, when you cut it with a machine, it will break loose clean.

R. X Q. 1280. Then you grind away the concrete?

A. No; we use a power scraper and break it loose in big chunks and lumps.

R. X Q. 1281. How did you do that without damaging the steel?

A. Cut down the side of it and brush it off clean in sections. We cut out to free the steel and cut loose from the steel down in the corners, and in doing that, we locate the stirrups or the hooks and go down the corners. We locate the hook and cut across from each hook to free the steel.

R. X Q. 1282. Is there any steel in the spandrel?

A. Yes.

R. X Q. 1283. Steel in the spandrel, too, and you had to work around the steel with the compressor?

A. Yes, sir. There is very little steel in the spandrel, mostly in the bottom except where the joists come into steel. One bar at the job, as I remember it.

R. X Q. 1284. Mr. Roberts, in those buildings where you had to bolt the pans, did you bolt every one of the pans?

A. Yes, sir.

1450 R. X Q. 1285. Or just a certain number of them?

A. All of them.

R. X Q. 1286. Every one of them, whether they were open or not?

A. Yes, sir.

R. X Q. 1287. And what did you use? A spike in a wood block or use a nut and bolt?

A. Bolt.

R. X Q. 1288. Did you go along afterwards and knock the bolt off?

A. Clipped it off from the bottom, struck the head off with a hammer, and knocked it out.

Mr. JULICHER: I think that is all.

Redirect examination by Mr. KILPATRICK:

R. D. Q. 1289. Mr. Roberts, did you have a compressor at the stone quarry at Reanoke?

A. Yes, sir.

R. D. Q. 1290. That was how far away from the main construction?

A. Twelve miles.

1451 R. D. Q. 1291. Do you know whether that compressor was sold at the end of the work or not?

A. It was.

R. D. Q. 1292. When you were asked about wage rates and classifications at Montgomery, Alabama, were you referring to some specific job the Blair organization was performing there?

A. I was referring to the fact we were using union men everywhere now, and I had in mind the Montgomery Hospital.

R. D. Q. 1293. That is a hundred per cent union job.

A. Yes.

Mr. KILPATRICK. That is all.

Re-cross-examination by Mr. JULICHER:

R. X. Q. 1294. That compressor at the quarry, was that bought new for that job?

A. Reconditioned for that job.

R. X. Q. 1296. And is that the one that was sold for \$200.00?

A. It is the only one that was sold at Roanoke.

R. X. Q. 1297. The reason I asked you, on all these records it seems to indicate the new one, the one that was bought for seventeen hundred, was later sold for two hundred.

1452 Mr. KILPATRICK. What records?

Mr. JULICHER. The records put at the disposal of our auditors.

Mr. KILPATRICK. Has your auditor testified about that?

Mr. JULICHER. No, he didn't.

The WITNESS. We have the new one still in use.

The COMMISSIONER. Therefore, it couldn't be sold.

The WITNESS. It couldn't have been. I know where the machine is now or was a week ago.

(Witness excused.)

Mr. KILPATRICK. If Your Honor please, we offer in evidence the certified weather reports for the Virginia sections for the months of November and December 1934, and January and February 1935.

Mr. JULICHER. No objection.

The COMMISSIONER. It may be admitted and marked "Plaintiff's Exhibit No. 144."

(Said weather reports, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 144," and made a part of this record.)

1453 JOSEPH HAMILTON HILL, a witness produced on behalf of the plaintiff, having been previously sworn by said commissioner, was examined and, in answer to interrogatories, testified as follows:

By the COMMISSIONER:

Q. 1. Give us your full name, please.

A. Joseph Hamilton Hill.

Q. 2. Take the chair, if you will, please. How old are you, Mr. Hill?

A. Fifty-two.

Q. 3. You live where?

A. I have two residences; Columbus, Ohio, and 2221 40th Street, N. W., Washington.

Q. 4. Occupation is what?

A. Civil engineer.

Q. 5. Do you have any financial interest in the outcome of this procedure?

A. No.

Q. 6. Have you any engineering degrees?

A. Civil Engineer.

Q. 7. Where did you take it?

A. Northern Ohio University.

The COMMISSIONER. Counsel may examine.

Direct examination by Mr. KILPATRICK:

Q. 8. By whom are you employed at the present time?

A. Truscon Steel Company.

1451 Q. 9. In what business is that company?

A. Fabrication, sale, and engineering of fireproof products for fireproof buildings.

Q. 10. What are your duties with that company?

A. I cover design and sale of what we call engineering products. Those are products that require special detail.

Q. 11. Do you do any designing in connection with reinforced concrete construction?

A. Yes, sir.

Q. 12. How long have you been engaged in that type of work?

A. I have done that intermittently for twenty-two years.

Q. 13. Does your company manufacture metal forms, sometimes called pans, for use in construction of concrete slabs?

A. Yes, sir.

Q. 14. Have you had any experience in supervising the installation of those pans in construction work?

A. Yes, sir.

Q. 15. Will you tell the Court what experience you have had in that connection?

A. Our company has rendered a great deal of engineering design service to architects and owners over a period of a good many years for concrete construction. We do a great deal of design on work used by men not thoroughly familiar with the use of these materials, and our service includes giving advice in the placing of these materials. That is included in our service to them.

Q. 16. In connection with that work, have you kept yourself familiar with engineering practices in that construction?

A. As far as possible.

1455 Q. 17. I hand you a group of three photographs, which have been introduced in evidence in this case as Defendant's Exhibit D. I ask you to examine those and tell the Court if, in your opinion, they depict good construction in as far as placing the pans is concerned.

Mr. JULICHER. I object to this question. In the first place, I don't think Mr. Kilpatrick has qualified this gentleman as a practical engineer. All the information he has given is with reference to a company he happens to be with at the present time. He hasn't said anything about his own personal experience.

By the COMMISSIONER:

Q. 18. What personal experience have you had?

A. I have designed possibly a hundred buildings of all sizes from twelve-story buildings down to one-story garages.

Q. 19. How many years?

A. With Truscon twenty-two years and with Carnegie four year prior to that. During that twenty years I have gone on the job and spent days and days with Truscon's superintendents showing them how to use the materials we sell. I have worked with tools, nailed the pans down myself, both permanent and removable pans.

The COMMISSIONER. Objection overruled and exception noted.

The WITNESS. From the photographs, I would say that this is good average construction. I have seen better, and I have seen much worse.

By Mr. KILPATRICK:

Q. 20. Do you notice in those photographs that at some pans, where the pans overlap, there appears to be an opening?

A. Yes, sir.

1456 Q. 21. In your opinion, would the openings appearing there permit a sufficient leakage of the concrete material to weaken the strength of the construction?

A. The question can be answered. It would have to be explained. If the concrete is good concrete, properly mixed, proper consistency, coming to the job with the amount of slump, the loss in that joint will not affect the strength. If the concrete is not proper and will allow the water and concrete through, then it may affect the strength, but I haven't seen any for years that would allow the grout to run through. All you do is lose volume, in my opinion.

Q. 22. Then let us assume that the concrete was not properly mixed, what is the customary procedure for remedying that defect if there is a leakage there?

A. All the work I did on concrete that was not properly mixed is to stop it until it is. That is all I can do.

Q. 23. That is what an inspector can do?

A. That is what I think.

Q. 24. Did you ever hear of bolting pans of that kind at the lap?

A. I have never encountered one instance of it in my association until I was talked to in this particular job. I never heard of it being done.

Q. 25. In pans of that type—your company manufactures pans of that type?

A. That question will have to be qualified. Our company manufactures for sale pans to fabricators. We at one time manufactured and stocked pans. We maintain large presses 1457 that small fabricators are unable to have, and as a result, we manufacture pans for jobbers instead of fabricators, and in turn, rent the pans when we sell reinforcing material on the various jobs.

Q. 26. What reinforcing materials do you sell?

A. Reinforcing bars and mesh.

Q. 27. Are you familiar with pans that are manufactured by other manufacturers in general around the country?

A. Yes; I have had experience with about all I ever heard of and used them. Have two types, straight edge pan and flange edge pan, and different firms have them, and we have a little different contour curve section and perfect circle or use bent corners.

Q. 28. Do you know of any pans manufactured by any manufacturer which have holes punched by the manufacturer for the purpose of bolting at the lap?

A. I have never heard of them.

Q. 29. Do they punch holes for any other purpose?

A. They do punch holes in the end for metal caps.

Q. 30. Punched in both ends of the pan?

A. Never to my knowledge.

Q. 31. Could the manufacturer, as a practical matter, punch holes in the pan for the purpose of bolting at the lap?

A. In shop fabrication of holes in pans they would be very difficult to install because all these pans are made on a die. The pans are exact sections and place one upon another. One pan must fit over another and it would be a very difficult thing to punch holes that would match.

The COMMISSIONER. Read the question.

1458 (Thereupon, the reporter read the pending question.)

A. (Continued.) The manufacturer could punch the holes. They would not lap very well. It is easy to punch a hole.

By Mr. KILPATRICK:

Q. 32. If these holes were punched, would that serve the purpose in construction of bolting at the lap?

A. Yes; if you can get them in the right place.

Q. 33. As a practical matter in construction, would they always coincide?

A. Not in my opinion.

Q. 34. Explain to the Court why that is.

A. Pans have to one lap over the other. They are made on a die. They would be slotted to take care of the cross section. Now, when it comes to getting the holes to match in the other direction, all runs of pans would have to be in identical lengths in order to use multiple pieces of the same pan, which is the practice of this construction. I can explain that just a little better. If you had a run of pans sixteen feet long in one bay and the next fifteen, and then nine, it would be necessary to lap a pan in uniform length.

Q. 35. The overlapping of the pans on the job, as I understand, varies from job to job?

A. Varies with the total of the length of the run of the pan.

Mr. KILPATRICK. That is all.

The COMMISSIONER. Any cross-examination?

Cross-examination by Mr. JULICHER:

X Q. 36. Don't these pans show that holes are punched there?

A. I can only see one end of one pan at a time.

1459 X Q. 37. The other end is lapped under?

A. The other end is lapped under; that is right.

X Q. 38. These are holes punched in these pans that you see here on one end of these, aren't they?

A. Yes.

By Mr. KILPATRICK:

X Q. 39. You have no way of knowing whether the manufacturer punched them; do you?

A. No.

By Mr. JULICHER:

X Q. 40. Some one punched them?

A. Yes.

X Q. 41. How many times can you use a pan ordinarily?

A. That is a very difficult question. I have seen pans used over a period—I can show you pans used ten years.

X Q. 42. Why are they finally discarded?

A. When they get in such bad condition, can't anybody hold them in line.

X Q. 43. They get warped and bent so they will not serve their purpose?

A. Yes.

X Q. 44. And an old pan will leave too much of a grout, won't they?

A. I never had that question answered. The main thing is appearance. The only question is what appearance they leave the concrete in afterwards. I never thought the pan had any effect on the grouting or consistency of the concrete.

1460 X Q. 45. You say you have been troubled with leaking grout?

A. Not if you define grout as meaning a separation of materials in concrete. I will say years when we didn't consider the water ratio seriously, we did have wet concrete. Not for over fifteen years have we had that trouble since we have used the water ratio. If concrete is properly mixed, it will not separate that much.

X Q. 46. Suppose there is a leakage of either grout or concrete, what is the practice of remedying that situation?

A. Well, I have seen paper put over the joints. I have seen paper wedged into the joint. I have seen even straw in the joint if it was really bad.

X Q. 47. But you say you have never seen them tied together in any way?

A. I have never been on any job in my life where the pans were bolted together at the ends.

X Q. 48. You looked over these photographs, which are Defendant's Exhibit D, and there are spaces in between these various pans, aren't there, as shown there?

A. This distance here? [indicating]

X Q. 49. Yes.

A. Yes, sir.

X Q. 50. Almost all of them show that. What would you say the condition of the pans were?

A. Well, that could be brought about by two things, badly destroyed pans or one end of the pan being loose to the forms. You will see that that pan has a tendency to press in at one end and spread at this end. A great many times you don't find these

1461 bad joints in order. You don't find a bad joint here and then drop down and find one good joint between two bad ones. The reason for that is that the joint has a tendency to stiffen

up. One end is inside the other, and since it has a uniform section, the other end will naturally spread apart slightly.

X Q. 51. You say it has not been your experience to see any pans that were bolted. Do you know that that is ever done?

A. Since this was brought to my attention, I have talked to several engineers, and I have found that there are isolated instances of where it has been requested in recent years—the last two or three years.

Mr. JULICHER. That is all.

(Witness excused.)

The COMMISSIONER. Who is the next witness?

Mr. KILPATRICK. You are excused, Mr. Hill. Thank you very much.

Mr. BALL. We ask leave to examine Mr. J. L. Powers at this point.

JOHN LUTHER POWERS, a witness produced on behalf of the plaintiff, having been previously sworn by said commissioner, was examined, and, in answer to interrogatories, testified as follows:

By the COMMISSIONER:

Q. 1. Give us your full name.

A. John Luther Powers.

Q. 2. Your age, please.

A. Fifty.

Q. 3. You live where?

A. Bennettsville, South Carolina.

1462 Q. 4. Your occupation?

A. Plumbing, heating, and electrical contractor.

Q. 5. Do you have any financial interest, either direct or indirect, in the outcome of this litigation?

A. No, sir.

The COMMISSIONER. Counsel for plaintiff may inquire.

Direct examination by Mr. BALL:

Q. 6. Mr. Powers, when did you begin the business in which you are now engaged?

A. 1910.

Q. 7. Had you had any experience prior to that time in that type of work?

A. Yes.

Q. 8. For how long?

A. Five years.

Q. 9. Where was that work done?

A. Bennettsville, South Carolina.

Q. 10. Will you state now in a concise way the experience you have had on this class of work and state what the amount involved was on this so we may—

A. I have handled a number of jobs, the heating contract at Coatesville Veterans Hospital, \$175,000.00; the mechanical contract at Ganandaigua, \$100,000.00, in addition to the hospital at Oteen, North Carolina, about \$90,000.00, and Waco, Texas, hospital, approximately \$100,000.00, I would say. I don't recall the exact amounts and other jobs at different places.

1463 Q. 11. You have done a good deal of Government work of this kind?

A. Custom House, New York City, Marine Hospital, Chicago; just completed a job over at Fort Myer, about sixty thousand dollars.

Q. 12. You have a job in Jacksonville, Florida?

A. Yes; a job there, the Post Office Building.

Q. 13. What personal experience have you had in this kind of work other than contracting?

A. Well, just what do you mean?

Q. 14. Well, have you personally done that kind of work?

A. Yes; I have handled the tools myself. Been on the job at different times and done about sixty percent of the estimating on all of it.

Q. 15. And are you familiar with what is necessary in locating sleeves and placing conduits and doing the trench work and the laying of the various pipes that are necessary in work of this kind?

A. Yes, sir.

Q. 16. Did you bid on the mechanical equipment work on this Roanoke job in 1933?

A. Yes; I was second bidder on this job originally.

Q. 17. Do you remember the difference between you and Redmon?

A. Roughly, I would say about twenty-two thousand dollars.

Q. 18. Roughly, yours was that much higher than his?

A. Yes, sir.

Q. 19. At that time did you familiarize yourself with the contract proposed by the Government and the plans, specifications, drawings, etc., connected with the Roanoke Hospital?

A. Yes; all the information they sent out, we familiarized ourselves with it.

1464 Q. 20. In the early part of July, 1934, did you visit the Roanoke Facilities that we are talking about?

A. I was at Roanoke sometime the latter part of June or in July. I would not say the dates.

Q. 21. Will you state in your own way why you went at all, the purpose you had in view, and what you found to be the condition with reference to the buildings and especially the relation

of mechanical equipment work to the general contractor's work?

A. We were figuring on completing the work for the bonding company at the time I visited there.

Q. 22. That was after Redmon had abandoned the contract?

A. I don't know about that. I don't know the time Redmon abandoned the contract, but I do know we were requested to look at the job. I went to the job. I found there wasn't very much mechanical work done at that time.

Q. 23. Did you make any estimate of the percentage that had been done?

A. In dollars, about eight to ten thousand dollars worth of work.

Q. 24. Out of a total of some \$380,000.00?

A. I don't recall?

Q. 25. You don't recall the amount of your bid?

A. No.

1465 Q. 26. What did you find?

A. I found part of the building sheathed and, as well as I recall, some brickwork done on the laundry building and practically no pipework or no materials there, small amount of material, and the underground work was not installed at that time or any of the outside work.

Q. 27. Did you make any estimate of the amount of the general contractor's work that had been done, by percentage, at that time?

A. Well, I imagine about anywhere from twenty-five to thirty-five per cent.

Q. 28. What was the relation between the work of the general contractor then completed or being completed and what the mechanical equipment company, Redmon, had done?

A. The buildings were far advanced and being delayed because of the mechanical work not being installed. We always go to our jobs and in lots of cases do the ground work before the walls come out of the ground, show the pipe lines before the footings are poured and the columns are poured. We do that to save ourselves and the general contractor because we have to work against the speed of the general contractor. If he takes six months to complete the job, we have to complete in six months. We cannot completed until he completes.

Q. 29. On that Roanoke job, have you got the contract on the m. e. job, when would you have commenced work?

A. We would have had our excavating machine and our tool house building there the date the order came in to proceed so that the men would be ready to start excavating.

1466 Q. 30. I believe you said no outside work had been done at the time you were there in June?

A. None that I seen.

Q. 31. If you had had that contract, would it have been good practice to have begun on that work long before that time?

A. Yes, sir.

Q. 32. That work was divided into two parts, the excavating where the buildings were placed, which had to be done by the general contractor, but the mechanical equipment contractor had to do the work and dig his trenches outside?

A. He also had to dig trenches inside. After the excavating is done by the general contractor, the trenches had to be dug by the heating contractor to run his pipes in and the outside work also had to be done by the mechanical equipment contractor.

Q. 33. According to good practice, should you say the mechanical equipment man should have—

A. It would have been good practice to have got his underground work done ahead of the brick and tile and other items being put all over the ground. We try to work ahead of those in order to save time.

Q. 34. Would it have been good practice to do his outside work before the grading and approach work?

A. Yes, sir.

By Mr. JULICHER:

Q. 35. That is according to your practice?

A. You have got to do that.

Q. 36. Have you any idea of the condition of that site before any work was done?

A. No.

1467

By Mr. BALL:

Q. 37. You were there the latter part of June. Did it show any indication of being changed, the hill on which it was built?

A. No; I didn't see it before it started.

By the COMMISSIONER:

Q. 38. You didn't see it before you bid?

A. No; I didn't see the contour of the ground. I will say they were cutting down the hills. I cannot say offhanded the buildings—I can recognize the buildings from the cut, the buildings on the far end, by machines in there. I asked several questions about what they were doing and how they were handling the work.

By Mr. BALL:

Q. 39. You had the drawings showing the contour lines before you bid on the job?

A. Yes, sir.

Q. 40. When you were there and saw this grading being done, it was done by the general contractor?

A. Yes.

Q. 41. Do you recall talking to Mr. Lacey or Mr. Ireland?

A. No.

Q. 42. Now, when you were there in the latter part of June, if that was the correct date, would you say that the buildings of the general contractor were far advanced and that no plumbing and heating had been done?

Mr. JULICHER. I object to the type of question Mr. Ball has asked. He is leading this witness to a point where he only has to answer yes or not. This witness can make the statements if he thinks it true.

The COMMISSIONER. My observation of this witness is that nobody is going to lead him.

1468 By Mr. BALL:

Q. 43. State, Mr. Powers, how far the buildings had advanced at that time when you saw them?

A. The buildings, as I stated before, part of them the roof was being put on, the sheathing on, roof on, brickwork done, all the concrete seemed to be up, other than what I mentioned before. The main buildings, there wasn't any brickwork done at the time I was there. The sleeves for the pipes were set and some conduits set through walls at different places though we didn't know whether correctly or not, and we didn't estimate what was done as being worth very much. While there, I made the statement that I wondered what was the trouble, they hadn't got that job to going before.

Q. 44. Well, at that time, was there any substantial amount of plumbing and heating done by the mechanical equipment contractor?

A. No.

Q. 45. Did you see any material there for that purpose?

A. Very little.

Q. 46. Assuming they had there the equipment shown on this report of Captain Feltham, would you say that would have been adequate at that time or was adequate at that time for that job?

A. I did not examine the material close enough to answer that question.

By the COMMISSIONER:

Q. 47. Assuming that was all there was there?

A. It would not have been adequate to start the job.

By Mr. BALL:

Q. 48. Did you see any men working there on the mechanical equipment work?

A. Yes, sir.

1469 Q. 49. About the locating of sleeves, from your experience and your knowledge of the practice in connection therewith, how many sleeves could two men locate a day in that Building No. 2, or any other building?

A. That all depends on conditions.

Q. 50. What is the maximum?

A. I would say, roughly, thirty to forty sleeves a day.

Q. 51. Would you say two men could locate all the sleeves in Building No. 2, which had five hundred sleeves, in half a day?

A. No, sir.

By Mr. JULICHER:

Q. 52. Do you know anything about No. 2 Building?

A. No, except No. 2 on various jobs.

By Mr. BALL:

Q. 53. The Government has uniform numbering?

A. Yes.

1470 Q. 54. Is that true of all buildings, that sleeves could be located, about thirty to forty a day by two men?

A. It is always our policy the minute the contractor starts his forming for slabs, the men immediately start the sleeves. If he starts, then within fifteen or twenty minutes the other men follow right behind him. The concrete fellows are right up on us and they often say the concrete fellows are pouring concrete in their pockets.

Q. 55. That is your practice?

A. That is general practice.

Q. 56. You speak of setting sleeves. What is the difference between merely locating and setting sleeves?

A. Well, some of the jobs the general contractor has to fasten them down. The mechanical trades, they set the places, and show the locations and see that the sleeves are properly placed. In other jobs, we have to fasten the sleeves.

Q. 57. Are you including the fastening of those sleeves when you say thirty to forty a day?

A. Yes; on the average work, I am.

Q. 58. Suppose they only have to locate them and not fasten them?

A. That would be an engineer's job, just locate them and making a mark.

Q. 59. You may not recall but the m. e. contractor was required to locate them and the general contractor was required to place them. How long would it take them to place the sleeves?

A. That is a very small job. In fact, it doesn't save us very much to have the general contractor place them. We have to keep a man with his man. There is practically no difference between our setting the sleeves and fastening them or showing the other man.

1471 Q. 60. Would it take practically the same time to locate it as to locate it and place it?

A. Practically the same thing.

Q. 61. Now, will you explain so that we may all understand, some of us do not exactly, how you locate the sleeves in a building of that sort?

A. Taken from the center line of the building and also the exterior line of the building.

Q. 62. The center line of the building, what, sir?

A. A steel wire is run through the center giving definite centers, then the outside of the walls are given, and the construction man has to work from those two measurements.

Q. 63. You mean to say he has to make all his measurements to locate the sleeves from that center line and in doing so, he must refer to the drawings furnished him by the Government?

A. Yes, sir.

Q. 64. Is that done before the slab is poured?

A. Yes, sir.

Q. 65. Then is it true he has to work over pans, for instance, with all the reinforcing steel laid, and some conduits and other things there?

A. Yes, sir.

Q. 66. Is that difficult or does it take more time than if the slab has been poured or had a floor of some kind?

A. Oh, yes.

Q. 67. The condition here in these buildings, they had no floor or no slab already laid, is that true? They had to locate them without any floor or slab in this building?

A. Yes.

1472 Q. 68. Would you undertake to say how long it would take one man or two to locate a sleeve in a building of this sort?

A. Oh, I imagine twenty minutes, something like that.

Q. 69. Now, I want to ask you about fine grading. What is the custom of the trade about doing fine grading before the mechanical equipment contractor puts down his underground work in the basement?

A. We never wait on the grading of the basements to the finished grading of the basements before we run our pipes as we establish that with a few points on the ground, we establish that finished grade and work to that grade. Lots of times we have our pipes running on the ground and when the finished grade is on there, they have three or four feet of cover. Other cases, we have to go deeper. We never wait until the finished grading unless it is some small room.

Q. 70. Is it customary or good practice to have the fine grading done before the mechanical equipment contractor does his work in that same place?

A. What is the question?

Q. 71. Is it customary—

A. No; it is not customary.

Q. 72. Have you ever known of a case where the inspectors or supervising officer required the fine grading to be done before the m. e. contractor put down his trenches or underground work?

A. No, sir. Lots of times we have been fussed with by not getting them in sooner than we did, not getting them in as fast as we could.

1473 Q. 73. It is a fact you did not finish that work after you had been there the latter part of June?

A. No.

Q. 74. In your judgment at that time, based on what you saw and what was required, could the mechanical contractor have kept up or caught up with the general contractor after that time so as to not cause delay?

A. Considering the delivery of material, I couldn't see how any one could have caught up with the general contractor unless he was delayed so they could have caught up. The buildings, when I was there, were ready for a lot of work. The vent pipe should have been coming out of the roof; all the pipes should have been able to stick out so he could put on his roof.

Q. 75. That was the work of the m. e. contractor; and they were not ready, is that it?

A. Yes.

Mr. BALL. You may cross-examine.

Cross examination by Mr. JULICHER:

X Q. 76. Did you know or do you remember what the contract period was?

A. I don't remember.

X Q. 77. Do you know that the work was finished within the contract period?

A. I have heard it was.

X Q. 78. Does the general contractor locate the center line from which all the sleeves are measured?

A. Yes.

1474 X Q. 79. And when does he do that?

A. Whenever he is asked to.

X Q. 80. Do you know whether the rough grading is done before the exterior pipes are laid?

A. It isn't customary.

X Q. 81. It isn't customary to do the rough grading before?

A. No.

X Q. 82. Suppose you have a large cut and fill?

A. Well, you can generally offset it by one that is not quite so deep. He moves the dirt and carries the dirt down to fill up the low point. Taking the straight average, we find we can do our excavating cheaper by taking it as is. We have cut eight to ten feet where if we had waited, we would have only needed five feet there. We have laid pipes on the ground where if we had waited for the finished grade, we would have had to go down five feet.

X Q. 83. It is done the other way?

A. It is done the other way.

X Q. 84. It is just that you do not happen to work that way, is that correct?

A. I wouldn't say that. It just happens the other fellow isn't in a position to handle it the way some other contractor would.

X Q. 85. There are different ways of doing things, aren't there?

A. Yes.

X Q. 86. And a man gets accustomed to doing things a certain way and feels it is better for him?

A. We all try to work on the best way for ourselves.

X Q. 87. In your opinion, would it make a great deal of difference whether the outside work of the mechanical contractor

1475 was done before or after the general grading?

A. No; it wouldn't make any difference whichever way I see it other than moving his time up where he would work under weather conditions he would have had to work under. For the interior, it is absolutely essential that the mechanical contractor be out of the way so they can put the roof on and build the walls.

X Q. 88. Suppose the job should start the first of January and when weather conditions are liable to be bad, freezing weather and snow. In your opinion, would it be good practice to start with your outside trenching at that time of the year?

A. No, sir; it would not.

X Q. 89. It does make a difference then?

A. Yes, it makes a difference.

X Q. 90. When you do start a job?

A. It makes a difference on the weather conditions. If you start in January and have snows, it would cost more money than summer weather or if you start in April.

X Q. 91. Suppose you were the contractor on a job that started in January or maybe the last couple of days in December, would there be anything much that you could do on a job at that time?

A. Yes, sir; all your underground work and all your buildings.

X Q. 92. In the middle of the winter?

A. Yes, sir.

X Q. 93. Even before the rough grading was done?

A. The general contractor does his grading in the building immediately. After he does his grading, we get in and do our work.

1476 X Q. 94. Immediately after he does his grading?

A. Yes.

X Q. 95. Then you cannot start at the same time?

A. We can go there in two or three days to work at those points. There are some of the Veterans' Hospitals where they don't have any grading other than the rough grading inside the building.

X Q. 96. Is it necessary to do it that way?

A. If you keep up with the contractor as he goes ahead, it is. You can verify that from some of the larger builders in this city.

X Q. 97. The general contractor, however, has to make his excavations for his different buildings before you can do anything on the building?

A. Not at all times. On a job we handled in Canandaigua, New York, we started the day we were notified and the general contractor started fifteen days later. He was borrowing wheelbarrows from us. We started on the day we were notified to proceed. We thought we had a fast contractor in Chicago, and they turned out to be very slow.

X Q. 98. Then you say there is work you can do even before there is work on the building? Work you can do even before the footings are in?

A. Nothing we can do on the buildings before they excavate for the buildings.

X Q. 99. But you can run your outside line if the terrain is right?

A. Yes; and we can run our lines before the footings are poured.

X Q. 100. And you can run them in afterwards?

A. Yes; you can run them in afterwards.

Mr. JULICHER. That is all.

1477 Redirect examination by Mr. BALL:

R. D. Q. 101. Mr. Powers, you said if the general contractor did his work in six months, the mechanical contractor would be bound to do his work in the same time?

A. Yes, sir.

R. D. Q. 102. You conceive it to be the duty of the mechanical equipment contractor to keep up with the general contractor regardless of his progress?

A. And on one contract they reserved the right if you were not keeping out of the way to put somebody else in there.

R. D. Q. 103. Could the general contractor complete this particular job outside before the mechanical contractor completed his?

A. Could he have?

R. D. Q. 104. Yes.

A. No.

R. D. Q. 105. Have you ever worked with Mr. Blair's organization?

A. Yes, sir.

R. D. Q. 106. Where?

A. We had the Jacksonville Post Office, and I think one small Post Office in North Carolina. At Jacksonville, Florida, we had seven carloads of material in the basement at one time. If we hadn't, we wouldn't have gotten out with them. We are rather proud of that job. They started the building January 1 or December 15 and served mail out of the building January 1 or December 15 and served mail out of the building the next Christmas the next year.

1478-1479 R. D. Q. 107. Who was Mr. Blair's superintendent?

A. Mr. Roberts or Mr. Darden, one.

R. D. Q. 108. Do you know whether they were the same gentlemen connected with the Roanoke job?

A. I don't know. I wasn't on the Jacksonville job except three or four times during construction.

R. D. Q. 109. That job was completed on time?

A. Yes.

R. D. Q. 110. Ahead of time?

A. Yes, sir.

R. D. Q. 111. By both of you, of course?

A. We had final inspection December 15, and I think they completed February 1. We were about six weeks ahead of them.

R. D. Q. 112. Do you know Mr. Blair's reputation for the performance of his work?

Mr. JULICHER. I object.

Re-cross-examination by Mr. JULICHER:

R. X. Q. 113. You are working with Mr. Blair at the present time on a job?

A. No, sir.

R. X. Q. 114. Did you just finish one?

A. No. Jacksonville was the last job, five or six years ago.

R. X Q. 115. You were a subcontractor?

A. Yes, at that time.

R. X Q. 116. You say the heating contractor is bound to follow the general contractor, didn't you?

A. Yes; in other words, we have a pipe to be built in the wall or in the floor. He cannot construct his wall or plaster that wall until after those pipes are run, sleeves set, pipes run, coverings to be put on. He can't go ahead and finish the wall.

By the COMMISSIONER:

R. X Q. 117. In other words, pipes like these?

A. In the Veterans Hospital they are concealed. Put them in place, put the metal lath on, and then plaster over them.

1480-1482

By Mr. JULICHER:

R. X Q. 118. Even though your contract provides a certain contract period in which you are to finish the job, you are bound to follow the contractor?

A. Yes.

R. X Q. 119. And you can be penalized for not following the contractor even though your contract provides for a longer period?

Mr. KILPATRICK. I object to that question.

The COMMISSIONER. I don't see any objection to letting him answer it if he wishes.

The WITNESS. I won't answer that because it will take a long detail.

By the COMMISSIONER:

R. X Q. 120. You are perfectly willing to leave that to the Court?

A. Yes.

JOHN T. CLARKE, a witness previously produced on behalf of the plaintiff, resumed the stand, was examined, and in answer to interrogatories, testified as follows:

Redirect examination by Mr. KILPATRICK:

R. D. Q. 194. Mr. Clarke, in some of the correspondence between your office and the Veterans Administration, which correspondence comprises Plaintiff's Exhibit No. 27, I note that there are symbols appearing at the foot of some of those letters, "CC:SC." Will you tell me what those indicate?

A. They indicate carbon copy sent to the Superintendent of Construction, the Government representative on the job.

R. D. Q. 195. And wherever requests for extension of time on account of Redmon's delays are addressed direct to the Veterans Administration, except through Captain Feltham's office, where

those symbols appear, it represents that copies went to his office, is that correct?

A. Yes, sir.

R. D. Q. 196. Calling your attention to the first sheet of Plaintiff's Exhibit No. 49, from what source did you get the figures which show the amount of cubic yards of earth moved each month?

A. From our detail reports sent in from the job, and they were afterward checked by Mr. Lacey, who was the engineer in charge of the excavation, and he testified in Montgomery as to the correctness of these tabulations.

R. D. Q. 197. What was the total number of cubic yards excavated over a period of the whole job?

A. 159,253 yards.

R. D. Q. 198. And in the month of January 1934, how many yards were removed?

1483-1484 A. 5,000.

R. D. Q. 199. Roughly, what percentage of the total was moved in the month of January?

A. A little over four percent; no, I am wrong, a little over three percent.

R. D. Q. 201. What was the total moved during the months of January and February?

A. January and February combined, 24,620 yards.

R. D. Q. 202. A statement in the Government's log of March 10 states, "1,000 yards removed as of this date." Would that mean up to that time?

A. No. It is intended to mean, to me, 1,000 yards on that day.

R. D. Q. 203. Could you tell us what percentage of the total earned by Algernon Blair at the end of June, 1934, was attributable to general grading? Have you made any such computation, and if so, tell the Court how you made it.

A. From the Government progress reports of June 30, 1934, we find that the total the Government had allowed us up to that time was \$333,965.46. Of that amount, \$13,167.00 was general excavation, which would be only about four percent of the total that had been paid us up to that date. Now, that is general excavation for the buildings. In addition to that, we had been allowed \$43,683.00 on approaches, curbs, grading, and so forth, and a part of that was for the outside grading. Now, we were paid for general excavation, according to our schedule for payments, on the basis of fifty cents a yard, so that this \$13,167 for general excavation would represent 26,334 cubic yards of earth.

The WITNESS. Now, the tabulation shows a total moved through June of 97,922 yards. If we deduct from that this 26,334 yards,

which was general excavation for the buildings, it will leave the amount of outside general grading that we had done up to that time, or 71,588 yards, and we were paid for that on the basis of forty-five cents a yard, so that, of the amount allowed, under approaches, curbs, grades, etc., \$32,214.60 was evidently 1486-1486 for general grading. Now, if we add to that the \$13,167.00 which has been allowed for general excavation and general grading *grading* up to that time, or \$45,381.60. Then, if we divide that by the total amount the Government had paid us up to that time, or \$333,965.46, we arrive at something over thirteen percent, in other words, a little over thirteen percent of what the Government had paid us up to that time was for the excavation work.

R. D. Q. 204. Mr. Clarke, in estimating on a job like the Roanoke job, preparatory to making a bid, does the Blair organization compute the amount of form lumber necessary to build the forms on the job?

A. Yes, sir.

R. D. Q. 205. Have you checked your working papers and records on which you prepared your bid for the Roanoke job, to determine the square feet of forms you estimated on that job?

A. Plain forms, 436,031 square feet; metal pan forms, 241,895 square feet.

R. D. Q. 206. Will you tell us, without detailing the buildings, the total square feet of forms you estimated for that job?

A. Plain forms, 436,031 square feet; metal pan forms, 241,895 square feet.

R. D. Q. 207. Just at that point, that last figure you gave, does that refer to the square feet of metal pans?

A. No, sir. That is the square feet of floor slabs, composed partly of metal pans and partly by wood; special forms, 4,266 square feet.

1487 R. D. Q. 208. What is the difference between special forms and plain forms?

A. Special forms would be for special locations, such as stairs or other complicated work, not just straight forms, beams, and slabs.

R. D. Q. 209. How much lumber do you estimate is required for each square foot of plain forms?

A. To build a square foot of plain form on this type of work averages—requires about three feet board measure.

R. D. Q. 210. In estimating the lumber requirements of plain forms, did you order three feet of board measure for each square foot?

1488 A. No, because we figured on reusing the lumber to a very considerable extent.

R. D. Q. 211. What is the customary estimate on lumber requirements, then?

A. Usually on one large building of several floors, we figure on the one complete reuse. In that case, we would expect to buy one and one-half feet board measure for every square foot of plain forms, but where there are a number of buildings in a group of this kind, and the lumber can be used from building to building, we would expect to get considerable more than one complete reuse; and we would not expect to buy quite that much.

By the COMMISSIONER:

R. D. Q. 212. On the theory you were not running the several buildings at the same time, or were running several buildings at the same time, you could not use the forms again?

A. Not if we were building the forms for the buildings at one time.

R. D. Q. 213. For several of them?

A. For several of them; yes, sir.

By Mr. KILPATRICK:

R. D. Q. 214. If you use your three feet board measure for each square foot of plain forms, that would be contemplating that you would be using each form on the building at the same time?

1489 A. Not only that, using the forms for one building before we wreck the forms for that building. Quite often we wreck the forms on the first floor and use part of that material in building the second floor and third floor and roof slabs.

By the COMMISSIONER:

R. D. Q. 215. I assume he meant to answer your question "yes"?

A. Yes, sir.

(Here followed discussion off the record.)

By Mr. KILPATRICK:

R. D. Q. 216. Mr. Clarke, how much lumber do you figure to use per square foot of the metal pan?

A. It takes about two and a half feet board measure of lumber to build a square foot of form in the metal pan slab construction.

R. D. Q. 217. You have the same question there of reusing on other buildings, and so forth?

A. Yes.

R. D. Q. 218. What would you expect to purchase?

A. I certainly would not expect to purchase more than 1.2 board measure for one square foot.

R. D. Q. 219. What do you require for special forms?

A. It takes about three and a half feet board measure to build a square foot of special forms, on an average, and that is usually

cut up in small pieces. On any special forms, we would
1490 not figure on getting any reuse at all on them.

R. D. Q. 220. You spoke of not reusing the special form lumber there. For example, would there be some of the other form lumber you would have left when you got through using it for form purposes, what would you do with the lumber? Would you throw it away?

A. No. A good bit of it would be used for building our scaffold for brickwork, interior scaffolding, squares, and planking laid on those, for completing the brickwork, and for other similar temporary purposes about the job.

1491-1492 R. D. Q. 221. Well, now, on the basis of these estimates, what did you figure to purchase in the way of temporary lumber of this type for the Roanoke job? Do you have some notes you have made on that?

A. Yes, sir.

R. D. Q. 222. Tell the Court what you did figure.

A. Building the forms on the basis as outlined a few moments ago, we figured a total of 879,648 feet. Of course, we would not expect to buy an exact amount like that. That is the way the figures worked out.

R. D. Q. 223. What other use would you have for this lumber, other than building the forms and inside scaffolding?

A. The construction of our field office and Government office, tool shed, batter boards, ladders, mortar boards, runways, screeds, and so forth, and we would usually expect to purchase some little new lumber to be used in connection with the salvage lumber for scaffolds.

R. D. Q. 224. Now, have you examined or checked again the plans on the Roanoke job and estimated the amount of temporary lumber, the total amount that should have been needed on that job, if you had not had to build outside scaffolding?

A. Yes, sir.

R. D. Q. 225. You have given us the figure of 879,648 feet for form lumber?

A. Yes, sir.

R. D. Q. 226. Now, you might give the stenographer the footage that you figured on the other items you mentioned.

A. Contractor's office, 6,000 feet; Government field office, 4,000 feet; tool sheds and miscellaneous, 4,000 feet; batter boards, ladders, mortar boards, runways, screeds, etc., 8,000 feet; new lumber to be used in connection with salvage lumber for scaffolding, and so forth, 20,000 feet.

By the COMMISSIONER:

R. D. Q. 227. What is a screed?

A. It is a straightedge used for striking off concrete or cement finish to an approximate level before trowelling.

1493

By Mr. JULICHER:

R. D. Q. 228. How many of those ~~would you use?~~ Is that an item worth mentioning?

A. A job of this size, it would be an item worth mentioning, yes.

R. D. Q. 229. Do you have to use a new one every little bit?

A. Oh, yes.

R. D. Q. 230. How many would you use?

The COMMISSIONER. The proof that it is worth mentioning is that he did mention it.

A. Why I mentioned it was because I was trying to list every item for which we would probably have to purchase lumber on the job, even mortar boards and ladders would be very little so far as the actual quantity of lumber is concerned. I was trying to mention every item.

By Mr. KILPATRICK:

R. D. Q. 231. If you add these miscellaneous items to your form lumber, what do you get?

A. 921,648 feet.

R. D. Q. 232. Now, in Plaintiff's Exhibit No. 50, in estimating what it would cost us to build these outside scaffolds, you figured, I believe, that you purchased 252,000 feet, approximately, for outside scaffolds, as the result of this ruling of the Inspector?

A. Yes, sir.

R. D. Q. 233. If you add that to that grand total you just gave, what would be the result?

A. 1,173,648 feet board measure.

1494 R. D. Q. 234. What do your records show you actually bought?

A. We actually bought at Roanoke the material for building our office and the Government office, the invoice does not show the exact amount of lumber, but it must have been approximately 10,000 feet. The total amount of money was approximately \$300.00. I have the invoice here.

In addition to that, we bought and paid for from the Montgomery office, 1,101,527 feet board measure of temporary lumber. If we assume that that amount purchased at Roanoke was 10,000 feet, then the total of temporary lumber that we bought would be about five and one-quarter percent less than the figures I arrived at as being our estimated quantity of temporary lumber to buy for the job, including this 252,000 feet for outside scaffolding.

R. D. Q. 235. Have you checked your invoices and tabulated the actual shipments of temporary lumber of the kind you are now talking about for the Roanoke Job, the Roanoke shipments?

A. I have, yes, sir; not only myself, but with Mr. Pratt, the Government Auditor, who listed every car and has a record of all the lumber, excepting this approximately 10,000 feet I spoke of as being purchased locally at Roanoke at the beginning of the job. He did not see the invoice for that.

R. D. Q. 236. Is that the tabulation?

A. That is correct; yes.

Mr. KILPATRICK. We offer that in evidence as Plaintiff's Exhibit—

The COMMISSIONER. No. 145. How many sheets are there?

Mr. KILPATRICK. Two sheets.

The COMMISSIONER. It may be admitted and marked "Plaintiff's Exhibit No. 145."

1495 By Mr. KILPATRICK:

R. D. Q. 237. Mr. Clarke, from Plaintiff's Exhibit No. 145, it appears that by June 6, counting the shipments received on that date, there had been delivered to the job 933,188 feet of this type lumber, in addition to the approximately 10,000 feet purchased locally?

A. Correct.

R. D. Q. 238. And on the basis of your estimate as to the lumber to be used for purposes other than forms, you deduct all amounts required for those other purposes. How much lumber would be left for the building of forms on June 5? It is a matter of arithmetic, about 842,000 feet?

A. No, sir; because the 10,000 feet for the contractor's and Government field offices is the additional bought locally, so we take 4,000 feet for tool sheds, etc., 8,000 feet for batter boards, etc., and 20,000 feet for scaffolds, which would make 32,000 feet to be deducted from the 933,000, which would still leave available something over 900,000 feet of lumber for the construction of forms.

R. D. Q. 239. And your estimate of the total amount of lumber needed for the entire job was less than that amount, was it not?

A. Yes, and from these records we did purchase actually less than the total estimated quantity.

1496 R. D. Q. 240. I am not sure, but I believe Mr. Roberts testified as to the date they began to build the outside scaffolding, did he not? Do you happen to know?

A. No; but the progress photographs will show outside scaffolding on Building No. 7, the first one built. I think you will find it was probably in July.

R. D. Q. 241. I hand you Defendant's Exhibit O-9, which is made up of progress photographs on Building No. 7, and ask

you to look at that and tell us if you can approximately tell when they began to build outside scaffolds on that building?
1497-1499 A. The photographs of June 30 show a small amount of outside scaffold complete.

R. D. Q. 243. Mr. Clarke, on March 22, 1934, the Government log, which is in evidence, reports that you were being delayed on account of being practically out of form lumber. Now, have you checked the daily reports to determine how much concrete had been poured March 22?

A. Yes, sir.

R. D. Q. 244. How much was that?

A. 614 cubic yards.

R. D. Q. 245. What percentage of the total concrete on the job does that represent?

A. 3.7 per cent.

R. D. Q. 246. Could you tell us the approximate percentage of the forming that was necessary for that? Would it be the same percentage?

A. No; it would be less, because in the early pouring, in the footings, there is usually very little forming.

R. D. Q. 248. I will ask you for your opinion if the first pour would require as much from lumber as the later pouring?

A. No.

R. D. Q. 249. Is that for the reason you stated before?

A. Yes.

R. D. Q. 250. Concerning the footings?

A. Yes, sir.

R. D. Q. 251. But your statement of the concrete which had been poured and the percentage of the entire job, was that an estimate on your part or taken from the records?

A. Taken from the records.

1500-1501 R. D. Q. 252. Can you tell us, as of March 22, how much form lumber had been delivered to the job?

A. If we assume that in addition to the 10,000 feet which had been bought locally that all of the lumber in that first car had been used for other purposes, we still would have had thirteen cars of form lumber available, or 283,117 feet board measure.

R. D. Q. 253. Mr. Clarke, that figure you have named there is from Plaintiff's Exhibit No. 145, is it?

A. That is correct.

R. D. Q. 254. A compilation of lumber shipments received at the job?

A. That is correct, with the first car omitted. Assuming all of that was used for other purposes than forming, we still would

have had the thirteen cars there available, which would amount to 283,117 feet board measure.

R. D. Q. 256. I call your attention to the general contractor's daily report of that same date, March 22, 1934, Plaintiff's Exhibit No. 11, and ask you how much was spent for labor in building forms on March 22?

A. \$206.48 labor.

R. D. Q. 257. Mr. Clarke, was there a Building No. 9 covered by this contract?

A. No, sir.

R. D. Q. 258. Have you checked from your records to determine the amount of concrete that had been poured on March 31?

A. Yes, sir.

R. D. Q. 259. What percentage of the total was it?

A. 4.1 per cent.

R. D. Q. 260. And what percentage of the total form lumber had been delivered on the same date?

A. 56.4 per cent of that we had estimated would be required for form building, as shown by this schedule.

1502 By the COMMISSIONER:

R. D. Q. 261. Exhibit what?

A. Exhibit No. 145.

By Mr. KILPATRICK:

R. D. Q. 262. In the Government daily log for May 7 and running through July 19, there are almost daily entries to the effect that Blair's work, particularly on Buildings Nos. 5 and 6 was being delayed on account of having no form lumber. Will you tell the Court what the form lumber deliveries during that period amounted to?

A. There were ten cars of form lumber delivered during that period, and one car of permanent lumber, in which was included 5,643 feet board measure of form lumber, and there was purchased locally 27,376 board measure, making a total of 259,975 feet board measure of temporary lumber delivered during this period.

R. D. Q. 265. Mr. Clarke, you may have covered this yesterday, but could you tell us the date from Exhibit No. 145 on which we had received at the job sufficient lumber to build all the forms which were built for the entire contract?

A. June 6, 1934.

1503

By Mr. JULICHER:

R. D. Q. 266. On what is that record based, the date of receipt or date of invoice?

A. Both. It shows both the date of invoice and date of receipt on the job.

R. D. Q. 267. What were you testifying on?

A. The date of receipt at the job.

R. D. Q. 268. The date of receipt at the job?

A. Yes, sir.

R. D. Q. 269. And who received this lumber?

A. Mr. Devinney, I think, signed the receipt for most of it. He was the office manager.

By Mr. KILPATRICK:

R. D. Q. 270. Your invoices show a receipt by Mr. Devinney or somebody else in each instance, with the date the particular car was received at the job?

A. Yes, sir. For each car there is an invoice in there with a stamp on it showing the date of the receipt and signed by the man who made the entry.

1504-1505 R. D. Q. 273. Mr. Clarke, have you, at my request, prepared a tabulation from your daily reports showing the amount of labor expended on the building of forms during the period from May 8 to June 15, 1934, inclusive?

A. Yes, sir.

R. D. Q. 274. Is this the tabulation in question?

A. Yes, sir.

R. D. Q. 275. Explain the three columns there opposite the date. What is meant by those?

A. The first column is the amount of labor shown in our daily report for that day, spent for the building of forms on Building No. 5. The second column shows the amount of labor shown by our daily report of that date as expended for the building of forms on Building No. 6, and the third column shows the total amount of labor shown by our daily report of that day as having been spent on the building of forms on the entire project.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It may be admitted and marked Plaintiff's Exhibit No. 146.

1506 By Mr. KILPATRICK:

R. D. Q. 276. Mr. Clarke, what is the custom prevailing in the Blair organization, in cases where there is a threatened shortage of form lumber at a job?

A. The superintendent would check from his record or by phone with the Montgomery office to find out whether or not such lumber was in transit to the job and could reach him in time for his needs.

and if not, he would purchase such necessary lumber locally, in order to prevent delay to his work.

R. D. Q. 277. Would he need to have the authority of the Montgomery office in order to make those purchases?

A. Every superintendent has that authority. In fact, it is his duty to purchase local material needed to prevent delay in his work.

R. D. Q. 278. Mr. Clarke, I hand you Plaintiff's Exhibit No. 143, which Mr. Roberts testified yesterday is a tabulation prepared by you with his assistance. Is that true?

A. Yes, sir.

R. D. Q. 279. Will you tell the Court the sources from which you obtained the information embodied in that exhibit? Just explain your calculations as you go along.

A. We studied all of our records, the report of Mr. Fahy, the testimony of Mr. Brown, and I discussed personally or would go to the superintendents who were in charge of the construction of the various buildings, asking them to set down every item they could recall—

By Mr. JULICHER:

R. D. Q. 280. When?

1507 A. Of work.

R. D. Q. 281. When did you ask them to recall this information? When the job was being done or some years later?

A. Some years later.

By Mr. KILPATRICK:

R. D. Q. 282. You couldn't very well do it until you heard Mr. Brown's testimony and Mr. Fahy's testimony, could you?

A. No, sir.

By Mr. JULICHER:

R. D. Q. 283. But you could have kept a record of the defective concrete at the time, couldn't you?

Mr. KILPATRICK. We will come to that.

A. Yes, sir.

The WITNESS. And from all of these sources we listed every item we could find of defective work or misplaced work that was removed or rebuilt.

By Mr. KILPATRICK:

R. D. Q. 284. In making this computation, did you exclude any of the work which is covered by the Government's testimony?

A. Yes, sir; on one instance.

R. D. Q. 285. What was that?

A. I cannot be certain whether it was Government testimony or whether it was Government log, but in some Government evidence

there is a statement about several columns having been poured before it was discovered that there was an error in the placing of the steel.

1508 R. D. Q. 286. What building was that, if you remember?

A. Building No. 7.

R. D. Q. 287. Other than that one instance, in your computation, have assumed that all of Mr. Brown's testimony and Mr. Fahy's testimony, including his report, and Mr. Feltham's photographs, actually were removed and replaced, the work covered by those sources?

A. We have.

R. D. Q. 288. All right, proceed.

A. In that one instance, all of our investigations indicate that only one column had been partially poured at the time the error was discovered, and so in that case, we included only one column in these computations.

1509-1510 R. D. Q. 289. Go ahead now with your explanation of your computation.

A. After listing these items, we set down the kind of crew that was used in cutting out this concrete work.

R. D. Q. 290. Now, then, is that an actual record of the time spent by that crew in cutting it out, or was that an estimate?

A. That was an estimate.

R. D. Q. 291. Who made the estimate?

A. I talked with several of the superintendents about it, and in the last analysis, Mr. Roberts and I discussed it, and in every case I allowed more time than the maximum estimates of these men who were actually on the work.

R. D. Q. 292. All right; proceed.

A. For instance, in connection with the removal of the misplaced wall in the basement of Building No. 2, Mr. Roberts testified yesterday that it took six laborers and a foreman three hours to remove it. In this computation, I have used six laborers and a foreman for six hours. He said to remove the seven columns under the first floor of Building No. 2 and one in Building No. 4 would require sixteen to twenty hours, and I have used twenty hours in that case.

That exhibit contains the tabulation of what we consider the maximum number of hours that would have been required to cut out that quantity of work according to our past experience, and it totalled fifty-one hours of labor, in addition to this wall in the basement of Building No. 2. In making this computation, we have allowed twenty cents an hour for the use of the air hammer, which would be \$1.60 a day, or something like \$40.00 per month, whereas, in our exhibit, asking the Government to pay us rental on the equipment, we have only asked for a rental

of \$10.00 a month for the paving breaker. On the air compressor we have allowed seventy-five cents an hour, which would be \$6.00 a day, or about \$150.00 a month. On our schedule of rental equipment we have listed the compressor at \$125.00 a month.

1511 R. D. Q. 295. Your computation of the extent of use of this machinery is substantially higher, then, proportionately, than the rental you are claiming under a claim for delay?

A. Yes.

R. D. Q. 296. Why do you make it substantially higher here?

A. In order to try to show that we are being as fair and liberal as possible in making this computation.

R. D. Q. 297. If right, go ahead. In your total cost of cutting out all defective concrete, it amounts to what?

A. According to this computation, \$148.20.

R. D. Q. 298. All right. What is the next tabulation concurring in that exhibit?

A. Form work required in connection with replacing this concrete:

R. D. Q. 299. Explain how you computed that.

A. Mr. Roberts testified yesterday that the forms for these columns were simply taken off and set aside and put back in place and metal clamps put around them. He told me he was sure it did not take more than \$1.50 per column. I have listed it at \$2.50 per column, or \$20.00. He said that the forms for the beams and slabs as referred to in Mr. Brown's report, 200 square feet, were also saved and put back in place very inexpensively, and I have shown that at ten cents per square foot, where new forms cost fifteen cents for a new form. For the windows, there were simply places at the jambs which required very little forming, and we have allowed \$10.00 for that. The footings required only a twelve-inch board around each footing, and

1512 we have allowed \$6.00 for that. For the wall in the basement which stayed in place two or three weeks, probably, before it was demolished, we have assumed that the forms had been destroyed and taken away, and we have figured new forms for that, 220 square feet for fifteen cents, or \$33.00, the total for the form work, \$89.00.

R. D. Q. 300. What is that next item, allowance for readjustment on reinforcing steel? Explain that.

A. Where the concrete was cut out of the columns, the steel remained in place, but there may have been some little readjustment of reinforcing steel, in that the bars may have been taken out entirely and replaced. In removing the four footings, the rods in that may have been destroyed and may have been furnished

new, so I have made an allowance here for \$50.00 for readjustment of all reinforcing steel, which would certainly seem to be more than ample.

We have then figured the quantity of concrete in these nine columns, the beams and floor, the walls in the basement of Building No. 2, four places at the windows and four footings, and have arrived at $20\frac{1}{2}$ cubic yards. That concrete cost \$7.25 per yard, which would be \$148.63.

R. D. Q. 301. Where did you get the \$7.25 per yard?

A. We had a contract with the Capitol Concrete Company. They furnished ready-mixed concrete, delivered in our hoppers at the various buildings for \$7.25 per cubic yard.

R. D. Q. 302. And that is what you actually paid?

A. That is what we actually paid.

1513-1514 —By Mr. JULICHER:

R. D. Q. 303. Didn't you mix your own concrete on that job?

A. No, sir. We bought the materials and allowed the Capitol Concrete Company—

R. D. Q. 304. There was a concrete-mixing plant on the job, was there not?

A. Yes. We sold them the materials and they sold us the ready-mix concrete back. Ordinarily, the pouring of concrete, after it is delivered at the building, would cost less than one dollar per cubic yard, but because this was poured in small quantities, we have put in \$50.00 for the labor of pouring this $20\frac{1}{2}$ yards, and then, to make sure, we covered everything, we made an allowance of \$50.00 for general cleaning up and hauling away of any debris, and arrived at the total estimate of \$533.83, as being the maximum spent for the removal and replacing of concrete work.

R. D. Q. 306. In computing this expense on Plaintiff's Exhibit No. 143, how many columns which had been mentioned anywhere in the record as having been removed did you leave out of your calculations?

A. Seven.

R. D. Q. 307. If they were included in here, if we should assume that they were all removed and replaced, could you give us an estimate of how much that would increase the total on Plaintiff's Exhibit No. 143?

A. Not more than \$150.00. As a matter of fact, the statement was made that the columns had just been poured, and in that case it would not have been—

R. D. Q. 308. Who made that statement, one of the witnesses in the case here?

A. Either one of the witnesses in the case or a statement in the log. After they had started pouring the columns, it was discovered the steel was not in the proper place and they were stopped, and the steel had to be corrected.

1515 R. D. Q. 309. What would that involve?

A. My superintendent in charge of that building states, as I have said before, only one column had been involved. What he did was remove the panel at the bottom and let that soft concrete run out and change the steel.

R. D. Q. 310. In freshly poured concrete, you would not have the cutting?

A. No.

R. D. Q. 311. When were you told this? When did you get this heresay information?

A. Two or three months ago.

R. D. Q. 312. Several years after the job was done?

A. Yes.

R. D. Q. 313. There was no report made at the time but you have based your calculations on what he said two or three months ago?

A. Yes.

By Mr. KILPATRICK:

R. D. Q. 313. Mr. Clarke, have you attempted in any other fashion than that shown in Plaintiff's Exhibit No. 143, to compute the outside expense of removing and replacing defective concrete on the Roanoke job?

A. Yes, sir.

R. D. Q. 314. Will you tell the Court what you have done along that line?

A. I have gone through our daily reports and tabulated every item mentioned in the daily reports in connection with the removal of concrete or replacing of concrete. I have then gone to the Government log and noted every instance where it refers
1516 to work being torn out on particular days. I have gone back then to our daily reports for those particular days and have taken every item that I could not positively identify as something else and put that in as a possible cost for removing work, and on that basis I arrived at a total of \$856.04 as being the maximum labor that could have been expended for that type of work.

R. D. Q. 315. On the basis of the hours of labor involved, about which Mr. Roberts testified and which you have reflected in Plaintiff's Exhibit No. 143, could you tell us the total number of man-hours involved in the removal of all this concrete, including those columns which you first excluded from Plaintiff's Exhibit No. 143?

A. Assuming 75 hours for the columns which were excluded in

this original tabulation, there would be a total of 421 man-hours of labor required, according to this estimate.

R. D. Q. 316. Would 75 hours, in your opinion, be ample to cover those columns which have been excluded?

A. Very much more than ample, yes.

R. D. Q. 317. Have you checked your records to get the number of man-hours involved in this entire job, including your subcontractors?

A. 651,249 man-hours.

R. D. Q. 318. On the basis of your estimate, can you tell us the percentage in terms of man-hours of labor involved in replacing this defective concrete in proportion to that of the entire job?

A. The 421 hours mentioned would be about one-fifteenth of one per cent of the total man-hours required on the job.

1517-1519 R. D. Q. 319. Mr. Clarke, I hand you a blueprint and ask you to state was that prepared under your direction?

A. Yes, sir.

R. D. Q. 320. Explain to the Court what it is.

A. This is a chart, the yellow line indicating the actual progress made in the general construction contract by Blair according to the Government progress reports based on the payments made monthly. The red line indicates the actual progress made on the mechanical contract based on the Government's progress report for that contract. The white dotted line shows the progress that Blair expected to make when he bid on the contract.

R. D. Q. 321. In connection with that broken white line, you say that is based on the progress he expected to make. Are you referring to the progress schedule which is in evidence here?

A. Yes, sir; and to another chart on which this same curve is plotted, in connection with a good many other progress charts of actual contracts, which chart has previously been placed in evidence to show that we did actually complete similar jobs in ten months or less.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It may be admitted and marked Plaintiff's Exhibit No. 147.

By Mr. KILPATRICK:

R. D. Q. 325. Mr. Clarke, I call your attention to Plaintiff's Exhibit No. 43, and ask you if the broken line on Plaintiff's Exhibit No. 147 is a duplicate of one of the lines appearing on Plaintiff's Exhibit No. 43?

A. It is; yes sir. On Exhibit No. 43, it is marked "Normal progress, Roanoke Hospital work, except for enforced delays."

R. D. Q. 326. I hand you another blueprint and ask you if that was made under your supervision?

A. It was.

1520 R. D. Q. 327. What does that represent?

A. It represents the actual construction progress on the Boilerhouse Building No. 13, and Administration Building No. 1 at Roanoke, and the actual mechanical equipment progress on those same buildings.

R. D. Q. 328. From what source did you get the data from which you prepared those curves?

A. From the Government's monthly progress reports. Separate progress reports were submitted on this group, because these buildings were required to be completed a little ahead of the other buildings.

R. D. Q. 329. The progress reports of those two buildings are contained in Plaintiff's Exhibit No. 36?

A. For the plumbing and heating, yes. The information for the mechanical equipment progress was taken from Plaintiff's Exhibit No. 36.

R. D. Q. 330. And to the general contractor's progress on Building No. 13 and No. 1, did you take that from Plaintiff's Exhibit No. 37?

A. Yes, sir.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It will be received and marked Plaintiff's Exhibit No. 148.

By Mr. KILPATRICK:

R. D. Q. 331. I hand you another blueprint. Was that prepared under your supervision?

A. It was.

D. D. Q. 332. What does that represent?

1521 A. It represents the normal or expected progress for the mechanical work as shown on the monthly Government's progress reports, and the actual progress of the mechanical equipment work as shown on the same progress report, Plaintiff's Exhibit No. 36.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It will be marked "Plaintiff's Exhibit No. 149."

By Mr. KILPATRICK:

R. D. Q. 333. Mr. Clarke, in Plaintiff's Exhibits No. 36, and No. 37, which are the Government's progress reports on the general contractor and the mechanical equipment contractor, respectively, the supervising superintendent includes in each report the

normal percentage of the work which should have been done as of that date, doesn't he?

A. Yes, sir.

R. D. Q. 334. Have you compared the normal, as set down by the Government supervisory force under the two contracts to see if they are approximately the same?

A. Yes, sir.

R. D. Q. 335. For the convenience of the Commissioner, this is a tabulation you have made from those two exhibits showing the normal for the two contracts?

A. That is correct.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It will be admitted and received as Plaintiff's Exhibit No. 150.

1522

By Mr. KILPATRICK:

R. D. Q. 336. Now, Mr. Clarke, after you had received the notice to proceed on this Roanoke job, which, I believe the record shows was in the latter part of December 1933, what, if anything, did you do between that time and January 1 in connection with this contract?

A. We placed a great many orders for materials and let a great many subcontracts, made many schedules of materials and shop drawings and other valuable data looking toward the prosecution of the work.

R. D. Q. 337. Do you have with you records indicating when you placed your subcontracts on this job?

A. Yes, sir. I have our office copies of all the orders and subcontracts made on this job.

R. D. Q. 338. Have you prepared a tabulation of such orders and contracts showing the dates on which they were placed or signed?

A. Only a few of those, made near the first of the job, to show that all of the major items were taken care of immediately.

R. D. Q. 339. All the major items were taken care of immediately, is that your testimony?

A. That is a fact, too. Of the nineteen subcontracts made on the job, eight were made before the end of December, 1933, and five were made during January, 1934. We began placing orders and subcontracts on December 6, 1933, and placed a great many of them before the end of that month.

R. D. Q. 340. That was before you got the notice to proceed, wasn't it?

A. The notice to proceed was dated December 19; and I think was received December 21.

1523

R. D. Q. 341. What is your answer to my question?

A. Yes, sir.

R. D. Q. Mr. Clarke, have you checked the plans of the first floor of Building No. 2 to determine the number of sleeves and other outlets which were required to be located by the Redmon Heating company or the Mechanical equipment contractor?

A. I have.

R. D. Q. 343 Is this part of the plans on the Roanoke job?

A. Yes, sir.

R. D. Q. 344 And what is that particular drawing you have in front of you?

A. That is the plumbing plan of the first floor of the main Building No. 2, Drawing No. 2-28.

R. D. Q. 345. And what is the next one?

A. The heating plan, first floor of that same building, Drawing No. 2-32.

R. D. Q. 346. And what is the next drawing?

A. The electric plan, basement, Building No. 2, Drawing No. 2-35, and the next is a drawing of the first floor electric work of the same building, Drawing No. 2-36.

R. D. Q. 347. Now, having checked those drawings for the purpose mentioned, have you prepared a tabulation showing the number of locations to be made by the mechanical equipment contractor?

A. Yes, sir.

R. D. Q. 348 Is that the memorandum which you prepared?

A. It is.

1524 R. D. Q. 349. Will you state to the Court the number of locations involved in each class of mechanical equipment contractor's work, and explain how you computed the time required for locating those sleeves, that is, as to the first floor of Building No. 2?

A. The tabulation starts with the heating, which was the second of the plans mentioned, and so I refer to it first. This plan shows the location and size as to the number of square feet of radiation of every radiator required on this floor, and also shows the steam risers and returns which pass through this floor to serve the radiators on the floors above. I have counted the number of radiators on this floor and find that there are eighty-five. Each radiator requires a connection at each end, a steam supply and a return line, and would, therefore, require the placing of two sleeves, so there would be required for the radiators 170 sleeves, 65 pairs of steam risers and returns; each pair requires two sleeves, so 130 sleeves are required for the steam risers and returns.

On the next sheet, all the plumbing fixtures are shown, and I have carefully counted and tabulated those, and I find thirty-

one lavatories, each lavatory requiring a hot water line, a cold water line, and a waste line, and, therefore, takes three sleeves through the slab, making 93 sleeves required for the lavatories.

The COMMISSIONER. Is there any need of going through all these items, there, if you are going to offer it in evidence?

Mr. KILPATRICK. No, sir.

The COMMISSIONER. There is no other plumbing.

1525-1526 The WITNESS. Similarly, all fixtures and special fixtures are listed, and a total number of sleeves required for the first floor for plumbing and heating is 678.

By Mr. KILPATRICK:

R. D. Q. 350. Now, explain the deduction you have made below there on your memorandum.

A. In some cases, there are two or three, and in a few cases, even four pipes going up very close together, and in that case it would not be as difficult to locate each one as it would where there is a single pipe. In other words, I have deducted from this total all of the duplications and have arrived at a net of 551 different locations which would have to be established for these sleeves. In some of these locations, three or four sleeves would have to be placed near each other, but the location of the additional sleeves would not take a great deal of time.

R. D. Q. 351. And the figure at the bottom is merely a mathematical computation based on an assumption?

A. Yes, sir.

Mr. KILPATRICK. I offer that in evidence.

The COMMISSIONER. It will be received and marked Plaintiff's Exhibit No. 151.

By Mr. KILPATRICK:

R. D. Q. 352. Mr. Clarke, you have not, in that particular memorandum, covered any electrical work, have you?

A. No.

R. D. Q. 353. Will you tell the Court what is involved in the electrical work on that same floor?

A. Yes, sir. Wherever there are not furred ceiling spaces in which the conduits can be run later, or in other words, where there is an exposed concrete ceiling in the basement, the outlet boxes for that ceiling must be placed on the forms before the concrete is poured, and all of the conduits that run to and are connected to that box. This Drawing No. 2-35 shows the outlets and main conduit lines for the first slabs for the basement ceiling of Building No. 2.

I have made a computation or a careful take-off and find that 43 of those ceiling outlets would have had to be installed or did

have to be installed before the slab was poured, and that 1,680 lineal feet of electrical conduit had to be installed before the slab was poured. In addition to that, there were 15 sleeves which the electrical contractor had to locate through the foundation wall, and then there were many other problems he had to solve on that slab before it could be poured. For instance, if a suspended ceiling was not suspended far enough to go below certain beams so that this conduit could pass under the beams later, he had to install sleeves through those beams before the concrete is poured.

1528 R. D. Q. 368. Now, had you finished your comments about the electrical work?

A. I have not said anything about the cost of that work, plumbing or electrical.

R. D. Q. 369. You heard the explanation given yesterday by Mr. Powers, did you not, as to the labor involved in locating sleeves and outlets?

A. Yes, sir.

R. D. Q. 370. Are you in agreement with his opinion as to the time it would take two men to locate a particular sleeve?

A. Approximately.

R. D. Q. 371 As to the electrical work, Mr. Clarke, you have spoken of sleeves in the first floor slab, which is the ceiling of the basement. What about the second floor slab? Would that
1529 involve as much electrical work as the first floor slab?

A. The second floor slab would involve, in this particular building, a great deal more electrical work than the first floor slab, because the electric work in the slab serves the floor below, and there was very little electric work in the basement of this building as compared to the electric work on the first floor of the building, which would have to be taken care of in the second floor slab.

By the COMMISSIONER:

R. D. Q. 372. The second floor being the slab under the second floor and ceiling of the first floor.

A. Yes.

1530 R. D. Q. 373. You do not agree, then, with Mr. Dodd's opinion, that two men could locate all the sleeves on the first floor of Building No. 2 in a half a day, as I understand it?

A. No, sir.

R. D. Q. 374. Have you made up from the daily reports which are in evidence a tabulation of the carpenter hours work on this particular contract, and wages paid?

A. I have.

R. D. Q. 375. Is this a photostat of your tabulation?

A. It is.

1531 Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It will be received and marked Plaintiff's Exhibit No. 152.

By Mr. KILPATRICK:

R. D. Q. 376. Mr. Clarke, as a matter of arithmetic, this tabulation indicates all carpenters were paid \$1.10 an hour, does it not?

A. Yes, sir.

R. D. Q. 377. That is, the first two columns after the date covering hours worked and wages paid?

A. Yes, sir.

R. D. Q. 378. Now, those figures in those two columns are got from where?

A. From our daily reports.

R. D. Q. 379. Now, the next series of four columns, headed, "Labor Cost Charged This Date to," four different types of carpentry work, where were the figures in those four columns obtained?

A. From our daily reports.

R. D. Q. 380. Then, at the right, there are the same classifications under a heading reading, "Approximate Distribution of Carpenter Hours." Tell us how that was made up.

A. The number of carpenter hours shown in the first column after the date was distributed under these heads, and an approximate proportion to the labor distribution on the daily reports under those headings. In order to simplify, suppose I start with one of the earlier reports, where on January 8, for instance, we had 28 hours of carpenter labor at \$30.80. On that day our daily report showed that we charged \$44.25 to temporary buildings, and there was no charge on that day for form work or mill work or framing and miscellaneous carpentry and, 1532 therefore, all 28 hours of carpenter labor of that day is distributed in the right column under the temporary buildings.

Then, going down a little farther, to Daily Report No. 39, February 14, we find there were only 16 carpenter hours that day. Our daily report showed \$3.30 charged to temporary buildings, and \$14.30 to framing and miscellaneous carpentry. Apparently, the \$3.30 was simply three hours of carpenter time at \$1.10 an hour, so I have distributed it, temporary buildings, 3 hours of the 16 hours carpenter time, and distributed the other 13 hours in framing and miscellaneous carpentry.

Later, when there were four divisions, and on some days labor distributed to all four of those divisions, it would get a little

more complicated, but the distribution is made in as nearly correct proportion as it was possible to make it from my knowledge of construction and from the distribution of labor on the daily reports.

R. D. Q. 381. Then this approximate distribution is an estimate on your part, but the underlying figures are taken from your daily reports?

A. Yes, sir; and these daily reports as to carpenter hours work and money paid do check with our pay rolls.

R. D. Q. 382. Have you checked the daily reports, Plaintiff's Exhibit No. 11 and No. 11-a, to ascertain whether any carpenters' helpers, or apprentices are shown, or have you checked them from any other source?

A. Yes, sir.

R. D. Q. 383. What did you check?

A. I find—

R. D. Q. 384. What records did you check?

A. Our daily reports.

1533-1535 R. D. Q. 385. What did you find?

A. I find that on January 18, 1935, near the end of the contract, one carpenter's apprentice is shown for one day, and that is the only apprentice or helper shown at any time on our daily reports or pay rolls. How that one got there, I will never know.

R. D. Q. 386. Mr. Clarke, are there any authorities recognized in the construction trade which set forth as the basis for estimating on the plumbing and electrical work the time required to locate sleeves, to run electric conduits and matters of that sort?

A. There are.

R. D. Q. 387. Could you give the Court the estimates included in authorities of that kind, naming the authorized publication in each instance?

A. This is Foster's Tested Estimating Tables for Labor and Materials.

R. D. Q. 388. By whom is that published?

A. Domestic Engineering of Chicago.

R. D. Q. 389. Is that recognized as an authority in the trade?

A. Yes, sir; and used by mechanical contractors as their basis for figuring their labor units.

R. D. Q. 391. What do you find in that publication on the subject of setting of sleeves?

A. One mechanic and one helper in an eight-hour day would ordinarily set 24 sleeves.

R. D. Q. 392. Mr. Clarke, what does setting include?

A. It includes locating, finding where it goes, marking the place on the form, setting the sleeve up there and tacking it in place.

R. D. Q. 393. In your experience, how much of that operation comparatively, is involved in the tacking and fixing in place?

A. Well, it certainly would not take more than one or two minutes. At the rate of twenty-four a day, it would take about twenty minutes.

R. D. Q. 396. Now, what is this publication which you 1536 now have in your hand?

A. It is the Manual of Labor Units of the National Electric Contractors Association, and it shows some information in connection with electric work, the placing of outlet boxes and the running of conduits.

R. D. Q. 397. What time is indicated there for those operations?

A. Four to five hours per 100 lineal feet of conduit of the size that was run on this job on this type of construction, in other words, 20 to 25 lineal feet per hour.

R. D. Q. 398. Is that for one or two men working together?

A. One man working alone.

R. D. Q. 399. Is that the way electricians operate in running a conduit?

A. Yes, sir. It also shows 65 hours for locating and placing 100 ceiling outlet boxes on concrete joists construction, which is this same type of construction, or 65/100 of an hour per one box.

1537 R. D. Q. 400. Mr. Clarke, the Government's daily log, which is in evidence, I believe, as Defendant's Exhibit A, contains a statement on August 2, 1934, "No. 2 being delayed on account of no framing timber on the ground for past eight days." Have you checked the daily report; Plaintiff's Exhibit No. 11 or No. 11-a, as the case may be, to determine how much, if any labor was expended on the framing of Building No. 2 on August 2 and the preceding eight days?

A. Yes, sir.

R. D. Q. 401. What is the total?

A. \$810.91 labor.

R. D. Q. 402. Could you tell us approximately how much labor hours would be covered by an expenditure of that sort?

A. That would average a daily crew of 9 carpenters and 3 laborers working on that framing each of those days.

R. D. Q. 403. Mr. Clarke, have you checked your records to determine the labor cost per ton of the placing of reinforced steel at Roanoke?

A. Yes, sir.

R. D. Q. 404. I believe that figure appears, or, rather, the total cost appears in Plaintiff's Exhibit No. 52 as being \$17,149.65, is that correct?

A. Yes, sir.

1538 R. D. Q. 405. Now, Exhibit No. 52 also shows that we estimated 825 tons of reinforcing bars, does it not?

A. Yes.

R. D. Q. 406. We agreed yesterday that was an error and our estimate was really 840 tons?

A. No. The invoices of actual shipments to the job total 842 tons, showing we actually placed that many tons.

R. D. Q. 407. Have you computed the actual cost from those figures?

A. Yes.

R. D. Q. 408. What is that?

A. If we make an allowance of \$100.00 for placing of this small quantity of mesh and charge the balance to the 842 tons, it would figure \$20.24 and a fraction cent per ton.

R. D. Q. 409. Have you checked your cost records on other contracts to determine how that cost compares with the cost of these other jobs?

A. Yes, sir.

R. D. Q. 410. What did you find?

Mr. JULICHER. I don't think that is necessary, Your Honor. We do not care about these other jobs.

Mr. KILPATRICK. We do, for this reason. We have alleged, because of the type of inspection we had on the reinforcing steel—you may recall the testimony at Montgomery—it cost us a good deal more than it should have cost us. To corroborate our statement, it should not have cost us that much, we show the cost of other jobs.

The COMMISSIONER. I think he should be permitted to answer. I overrule the objection and exception is noted.

A. In no case has the placing of reinforcing steel ever cost us that much per ton on any comparable work.

1539 By Mr. JULICHER:

R. D. Q. 411. Even where the hourly wage of skilled workers was on more or less? Have you taken that into consideration?

A. I have, and can give some details, if you like.

R. D. Q. 412. Is \$1.10 the usual wage you figure from?

A. Do you want some details?

Mr. JULICHER. I will ask the questions.

Mr. KILPATRICK. He asked you a question, Mr. Clark.

By the COMMISSIONER:

R. D. Q. 413. Is \$1.10 the average that you figure?

A. No, sir.

By Mr. JULICHER:

R. D. Q. 414. Was it sixty cents? Is that your average wage for skilled workers or for a rod man?

A. No. In one instance here, where it cost \$9.50 a ton to place it, the rod man was paid \$1.00 per hour, and common laborers forty-five cents per hour.

Mr. JULICHER. That is all.

By Mr. KILPATRICK:

R. D. Q. 415. Mr. Clarke, have you checked the drawings on the various buildings at Roanoke which had spandrel beams in the brick walls to determine the depth of those beams?

A. Yes, sir.

R. D. Q. 416. Have you prepared a tabulation setting out those dimensions?

A. Yes, sir.

R. D. Q. 417. As a matter of fact, that tabulation was included in a letter and memorandum to Mr. Bell and myself, was it not?

A. Yes, sir.

1540-1542 R. D. Q. 418. Is that part of that memorandum?

A. Yes, sir. May I explain it to a certain extent?

Mr. KILPATRICK. Let me introduce it first. We offer this in evidence.

The COMMISSIONER. It will be marked Plaintiff's Exhibit No. 153 and admitted.

By Mr. JULICHER:

R. D. Q. 419. What did you say this was, Mr. Clarke?

A. That is a tabulation of the depth of the spandrel beams on the various buildings. We expected to use scaffolds out of the second-story windows or the top story windows to pass the ceiling spandrels and install the cornice work and; therefore, the only beams that we would have any occasion to figure on getting past would be those at the second floor level of the two-story building, and at the second and third story level of three-story buildings, and this is a tabulation of the depth of all spandrels at the second floor on two-story buildings and second and third on three-story buildings.

By Mr. KILPATRICK:

R. D. Q. 420. Mr. Clarke, in your Montgomery testimony, you identified Plaintiff's Exhibit No. 50 as being the cost of building

exterior scaffolds. In that computation, you deducted the value of necessary scaffolds for cornice work and for getting past these spandrel beams, did you not?

A. Yes.

R. D. Q. 421. Which you estimate as \$3,047.20 on this job?

A. Yes.

R. D. Q. 422. I hand you Plaintiff's Exhibit No. 142, being a group of photographs of a hospital at Dayton, Ohio, and ask you if that is the type of scaffold you had in mind in making that adjustment in Plaintiff's Exhibit No. 50?

A. It is.

R. D. Q. 423. Mr. Clarke, you have seen Defendant's Exhibit G-G, being a supplementary report of Mr. Rauber, about which we had some testimony yesterday, have you not?

A. Yes, sir.

R. D. Q. 424. Do you recall his recommendation concerning a violation of the code of fair competition of the mason workers' industry?

A. Yes, sir.

R. D. Q. 425. I hand you a letter and ask you if that was received by you from the State N. R. A. Compliance Director on the subject of that masons' code?

A. Yes, sir.

Mr. KILPATRICK. We offer this in evidence as Plaintiff's Exhibit. The COMMISSIONER. Exhibit No. 154. Are there two sheets or one?

Mr. KILPATRICK. Two sheets.

By Mr. KILPATRICK:

R. D. Q. 426. I hand you Defendant's Exhibit P, introduced through Captain Feltham as being a justification for requiring the use of temperature steel in concrete slabs where two-way steel was used. Will you tell us what that particular document is?

A. This is the concrete column schedule for Building No. 2 at Roanoke, Drawing No. 2-26.

R. D. Q. 427. And what, if anything, do you find on there with reference to temperature steel?

A. There are general notes in the upper righthand corner of this sheet, headed "General Notes for all Buildings," and the third note under that heading is the one to which Captain Feltham referred.

R. D. Q. 428. And what does that note say?

A. "Shrinkage and temperature reinforcement: ribbed slabs, $\frac{1}{4}$ inch round bars 12" c-c. Solid slabs, $\frac{3}{8}$ " round 12" c-c." Then it goes on to refer to slabs on grades, etc.

R. D. Q. 430. Captain Feltham said that this note was his justification for requiring temperature steel in a slab which had two-way reinforcing steel, which I believe our testimony at Roanoke shows that reinforcing bars were laid not only horizontally but laterally. Is that correct, Mr. Clarke, is that what you call two-way?

A. All of them are horizontal, but they are laid in opposite directions.

1544 Mr. KILPATRICK. That note does not convey to my layman's mind the information that if you have the bars, the reinforcing bars, running in two different directions you must also include temperature steel, and I am asking Mr. Clarke as an expert to tell us if that note does say that must be done.

By the COMMISSIONER:

R. D. Q. 431. Is that your interpretation of that note?

A. No, sir.

By Mr. KILPATRICK:

R. D. Q. 432. What is your interpretation?

A. That where temperature steel is required in a slab, it should be $\frac{3}{8}$ " round bars 12" on center.

R. D. Q. 433. After you protested against his ruling that you be required to put this reinforcing steel in two-way reinforcing slab, what did the Veterans' Administration rule on that?

Mr. JULICHER. Did Mr. Clarke make a protest? I don't think he made a protest.

Mr. KILPATRICK. All right. We will find it in the record and show he did.

Mr. JULICHER. If he says he did, I am ready to accept that.

By the COMMISSIONER:

R. D. Q. 434. Do you remember whether protest was made?

A. Mr. Ellingsworth came to Washington and handled it personally, and I think it was also handled by correspondence, but I am not certain on that point.

By Mr. KILPATRICK:

R. D. Q. 435. Mr. Clarke, you were present yesterday when Mr. Roberts testified about the hearing before Colonel Hackett
1545 in connection with Mr. Dodd's charges, were you not?

A. Yes, sir.

R. D. Q. 436. Were you present at that conference?

A. Yes, sir.

R. D. Q. 437. How did that hearing originate, if you know?

A. We were low bidders on the construction of a P. W. A. project at Nashville, the Sylvan Park School.

R. D. Q. 438. Do you remember about when that was?

A. It was in June 1935. The award of the contract was delayed so long that we got in touch with the P. W. A. State Director at Nashville, and asked him why the delay, and he told us that all he could find out was we were not going to get the contract at all, and if we wanted to know why, we had better get in touch with Colonel Hackett, who was Deputy Administrator of the P. W. A. here in Washington. I phoned Colonel Hackett and asked him about the contract, and he told me that we were not going to be awarded the contract because of many charges that had been made against us for contract violations and that we were, in a sense, blacklisted by the Government. I told him that we knew nothing about that, and begged for an opportunity to prove that we were not guilty of these charges before we were actually convicted. He agreed that that was a fair proposition and told me over the phone the nature of a few of the charges and wired me a list of the other charges, made an appointment with me on a certain day on which we could appear before him and answer those charges.

R. D. Q. 439. Do you happen to have that telegram with you that he sent you?

A. I think it is in one of the folders there.

1546 R. D. Q. 440. Proceed with your story.

A. Mr. Blair, Mr. Roberts, Mr. Devinney and I came to Washington and appeared before Colonel Hackett. He sat at his desk with two other gentlemen, I believe from his staff, by him.

By the COMMISSIONER:

R. D. Q. 441. You do not remember who they were?

A. I do not.

The WITNESS. And read from documents which he held in his hand, telling of these various charges and the expressions that he used were, "In Mr. Dodd's sworn statement he says that you did" so and so, or "I read from Mr. Dodd's sworn statement," and in the course of the interview he told us of all the charges that had been made. We were able, mostly by documentary evidence that we had brought with us, to disprove these charges, and he asked us to come back in the afternoon. When we went back in the afternoon he told us that we were exonerated of every charge and that the contract would immediately be awarded to us.

R. D. Q. 442. Did he make any further comment about Mr. Dodd's charges?

A. Yes, sir.

R. D. Q. 443. What did he say?

Mr. JULICHER. I think this irrelevant, Your Honor.

Mr. KILPATRICK. We are impeaching the testimony of Mr. Dodd.

The COMMISSIONER. I think you had better let him answer.

A. He said when "Mr. Dodd spoke of making you cut out \$30,000.00 worth of concrete he went too far. I knew there was something wrong, and we have investigated, and we have found out all we want to know about Mr. Dodd."

1547 By Mr. KILPATRICK:

R. D. Q. 444. Was that confirmation received by you from Colonel Hackett of his telegram?

A. It is; yes, sir.

R. D. Q. 445. Which was sent to you prior to the Washington conference?

A. Yes, sir.

Mr. KILPATRICK. We offer that in evidence.

The COMMISSIONER. It will be received and marked "Plaintiff's Exhibit No. 155."

(The said telegram, so offered and received in evidence, was marked "Plaintiff's Exhibit No. 155" and made a part of this record.)

Mr. KILPATRICK. You may cross-examine.

The COMMISSIONER. Is there any cross-examination?

Mr. JULICHER. Yes, sir.

Re-cross-examination by Mr. JULICHER:

R. X Q. 446. Mr. Clarke, how does it happen that you do not have any complete records of the scaffolding used under your scaffolding item? How does it happen that you only have estimates to offer, when you probably knew at the time that you were going to make a claim for those?

A. We never kept accurate records of matters of that kind. I don't think we had any idea at that time of making a claim.

R. X Q. 447. Well, you felt the order, if there was an order, was not just, didn't you?

A. Yes; and many times we have complied with orders we felt were unjust and have made no claims.

R. X Q. 448. Even when they ran into \$10,000.00 or more?

A. Yes.

1548 By the COMMISSIONER:

R. X Q. 449. In that connection, may I ask a question, please? To what extent, in the last five or ten years, has Algernon Blair had Government contracts? Did he have any before this?

A. Mr. Blair has been almost continuously engaged in Government work for approximately forty years, and we have continued

to do work for the Veterans' Administration since its organization, and we have under construction at present a group of Veterans' Hospital Buildings at Montgomery amounting to more than a million dollars. We have recently completed the Veterans' Hospital Building at Waco, Texas, and at Indianapolis, Indiana.

The COMMISSIONER. That is enough. I just wanted to find out.

By Mr. JULICHER:

R. X Q. 451. So you did not expect to make a claim for this? Is that the answer to my question that you do not have any exact figures?

A. Toward the end of the job, we realized we would have to make a claim.

R. X Q. 452. But you filed no protest at the time, no written protest?

A. On many of the unfair rulings—

R. X Q. 453. I am talking about this scaffolding.

A. I cannot answer that question.

R. X Q. 454. Mr. Clarke, doesn't it seem strange to you that the Veterans' Administration could send Mr. Brown and Mr. Fahy down to the Roanoke Facility if there were only a few routine difficulties with the concrete?

1549 A. It seems to me that Mr. Fahy's and Mr. Brown's reports would be the best evidence of why—

R. X Q. 455. I am asking you the question.

A. No. If they were having some difficulty in getting good concrete, I see nothing unusual about their being sent there to see if they could find out what the difficulty was and help us to get it straight.

R. X Q. 456. Any more than it was strange for Algernon Blair to have Messrs. Andrews and Ellingsworth up to assist with the job, is that your view?

A. Yes. Some problems developed that our forces in Roanoke seemed inadequate to cope with. We sent the others up.

R. X Q. 457. As a general thing, do you keep a record of rejected or misplaced concrete on a job?

A. Generally speaking, on all daily reports there is an entry of cutting out concrete or chipping of concrete.

R. X Q. 458. But in this case you did not make a record at all, did you?

A. We found a good many such entries.

R. X Q. 459. Are they all there?

A. I don't know.

The WITNESS. The records might now show the particular item. It might show cutting out concrete, \$10.00, without stating the particular location at which concrete was being cut out.

By Mr. JULICHER:

R. X Q. 461. Do you know whether or not it is the practice to advise Government inspectors of materials received on the job?

Are your superintendents told to advise the Government superintendent of materials received on the job? Are your superintendents told to advise the Government superintendent of materials received on the job, say, five carloads of lumber a day? Would they, in the ordinary course of business, notify the Government office?

A. That would depend on the particular Government inspector. Some of them ask for all that information, and some of them don't. Our men are instructed to give the Government representative all the information they ask for.

R. X Q. 462. Mr. Clarke, Algernon Blair entered into a contract with the carpenter's union on this job, didn't he?

A. Yes.

R. X Q. 463. That was about the middle of the job, wasn't it?

A. The latter part of June; yes, sir.

R. X Q. 464. Do you know whether the union regulations permit the use of apprentices?

A. They do.

R. X Q. 465. In what proportion?

A. That varies in different parts of the country and with different localities.

R. X Q. 466. Well, for instance, what is it in Montgomery, if you know?

A. I don't know definitely.

R. X Q. 467. Did you receive information that Feltham and Dodd, or either one of them prohibited the use of apprentices on this job?

A. Yes, sir.

R. X Q. 468. Which one?

A. Both, so far as I could see.

1551 R. X Q. 469. And did you do anything about that?

A. Yes, sir.

R. X Q. 470. What did you do?

A. I thought you said did I know anything about it.

The COMMISSIONER. Did you do anything about it?

By Mr. JULICHER:

R. X Q. 471. I asked you did you do anything about it.

A. We wrote from the Montgomery office, many letters, to our superintendents, advising them about how to go about to persuade Feltham and Dodd that those rulings were unfair, and how to try to get them to change those rulings, and we were in constant touch with the job almost every day by long distance telephone.

R. X Q. 472. Wasn't there a provision that stated you could finally appeal to the Labor Department?

A. No.

R. X Q. 473. There wasn't such provision in the contract?

A. I don't know.

R. X Q. 474. What is the classification of a rod man, if you know, skilled, unskilled, semiskilled, or what?

A. We have always considered them semiskilled.

R. X Q. 475. What are they in Montgomery, Alabama, do you know?

A. At present, union men under the jurisdiction of Birmingham unions, are called skilled.

R. X Q. 476. And you decided, or I mean the Blair organization decided on this Roanoke job they were to be unskilled? You decided you were going to use unskilled men to set reinforcing steel?

1552 A. We had always considered it a semiskilled classification, and have always used what we considered semiskilled men for that type of work.

R. X Q. 477. You admit that there was a difference of opinion in different parts of the country?

A. We didn't know about it if there was, and we have worked from New York to the Mexican border.

R. X Q. 478. Did you say that there were semiskilled carpenters or there were not semiskilled carpenters, or did you refer to them as apprentices?

A. On the Roanoke job?

R. X Q. 479. No; in the carpenters' trade.

A. There are semiskilled; yes.

R. X Q. 480. There are semiskilled?

A. Yes, sir.

R. X Q. 481. And on what do you base that opinion?

A. On my experience through the years.

R. X Q. 482. Is that true in Montgomery, Alabama?

A. Yes, sir.

R. X Q. 483. Do you know Mr. Story?

A. Yes, sir.

R. X Q. 484. Do you know that he is connected with the carpenters' union there in Montgomery?

A. Yes, sir.

R. X Q. 485. What would you say if he told you there was no such thing as a semiskilled carpenter?

A. A semiskilled carpenter?

R. X Q. 486. A semiskilled worker in the carpenters' union?

1553 A. (Continued.) If he should ask me that question, I

would ask him how any man would ever learn the carpenters' trade.

By Mr. JULICHER:

R. X Q. 487. Isn't there a difference between semiskilled workers and apprentices?

A. No, sir.

R. X Q. 488. There isn't? In your opinion, there is no difference between a semiskilled worker and an apprentice?

A. An apprentice is a semiskilled worker. There are also other classes of semiskilled workers.

R. X Q. 489. Well, as I understand the difference between a semiskilled worker and an apprentice, a semiskilled worker can do some work independently, whereas an apprentice has to work with a journeyman. Would that be a fair definition?

A. I don't know.

By the COMMISSIONER:

R. X Q. 490. Would the amount of brains A and B had and their ability to apply them tend to bring an apprentice and a semiskilled worker nearer together?

A. I would think so.

By Mr. JULICHER:

R. X Q. 491. I think in your computations there you make a claim for photographs for four months, isn't that so?

A. Yes, sir.

R. X Q. 492. Starting with November 1, isn't that correct?

A. Yes, sir.

R. X Q. 493. And you claim you could have finished the job on November 1, except for certain delays?

A. Yes.

1554 R. X Q. 494. Don't you think the Government should receive a credit for at least one set you have charged in November?

A. No, sir.

R. X Q. 495. You would have had to supply a final set, would you not?

A. Yes, sir.

R. X Q. 496. Wouldn't that November set be the final set?

A. Yes, sir.

R. X Q. 497. What is your method of computation?

A. We had done after that—

R. X Q. 498. You had three more.

A. The set supplied the first of November would have been the final set if we completed then, but as it was, we had to furnish photographs on the first of November, the first of December, the first of January, the first of February, and then a final set on the

fifteenth of February, so that there were four additional sets required by the three and a half months' delay.

R. X Q. 499. That isn't the way it is set up, is it?

Mr. KILPATRICK. Where? There are four sets of monthly progress photographs at \$56.10.

Mr. JULICHER. I cannot find that testimony on looking at the Roanoke testimony of Mr. Clarke.

By Mr. JULICHER:

R. X Q. 500. Then you did supply two sets of photographs in February? Is that the way it stands?

A. Yes.

R. X Q. 501. And you are not charging for the set supplied in November, on the first of November?

A. We are charging for four complete sets of monthly progress photographs.

1555 R. X Q. 502. I am trying to find out whether or not you were charging for the December, January, February and February 15, or November, December, January, and February?

A. The final photographs are somewhat different from monthly progress photographs, and final photographs being deferred from November 1 to February 15 made it necessary for us to furnish four sets of progress photographs, one on November 1, December 1, January 1, and February 1, four complete sets of progress photographs.

R. X Q. 503. Now, then there wasn't any set filed on February 14 or 15 when you finished the job?

A. Yes, the final one.

R. X Q. 504. They were furnished on February 14 or 15?

A. Yes.

R. X Q. 505. Were the salaries of Mr. Andrews and Mr. Ellingsworth charged to the Roanoke job before they appeared in Roanoke, do you recall?

A. No, sir.

R. X Q. 506. Were they part of your organization?

A. They were.

R. X Q. 507. On other jobs?

A. Part of our Montgomery office organization.

R. X Q. 508. Mr. Clarke, I think you have stated previously that you generally assist or supervise the making of estimates for the Blair organization, is that correct?

A. Yes, sir.

R. X Q. 509. When you make an estimate and allow a certain time for a job, do you always figure it less than the contract period calls for?

1556 A. We figure it the length of time we think it will take to construct the job, regardless of the contract time.

R. X Q. 510. You figure the job without considering the contract period, or do you attempt to make it as low under it as possible?

A. Naturally, we have to take the contract period into consideration. For instance, we have figured jobs where the contract time limit was six months, and where we knew it was impossible to complete the job in six months. We figured it in eight months, and included in our estimate liquidated damages for the additional sixty days.

R. X Q. 511. And when you figured this job for 300 days, did you consider that the Veterans' Administration might not be able to take over those buildings in November?

A. No, sir; because we had completed many Veterans' Hospitals groups ahead of time already, and they had taken them over as rapidly as completed.

R. X Q. 512. What would you do if they decided they would not accept the buildings until the end of the contract period?

A. I am afraid we would have to employ a lawyer again and try to force them to do so. There is nothing in the contract to indicate they will not accept the buildings until the end of the contract period.

R. X Q. 513. There is nothing in the contract, either, that will force the Government to take the buildings.

R. X Q. 514. Did you prepare a computation setting out the expense to Algernon Blair of bolting those pans?

A. Yes.

1557 R. X Q. 515. How many did you figure? How many buildings did you figure as having been bolted?

A. I can't recall at the moment. The number is in the testimony.

R. X Q. 516. You said in your redirect at Roanoke, Page 730, this bolting was not required in Building 6, as has been brought out in the testimony, but was required in all of the other buildings?

A. Yes, sir.

R. X Q. 517. I guess you will recall that Mr. Roberts yesterday had a little different story to tell, isn't that so? Didn't he say that they were not required to bolt any of the pans after the Virginia Engineering came on the job, and that in certain buildings bolting was not required?

A. I think he said after the Virginia Engineering was well started, the bolting was not required.

R. X Q. 518. That might make a discrepancy in your computation, wouldn't it, if you figured that only in Building 6 were you relieved from bolting the pans?

A. It might make a discrepancy in the testimony of Mr. Roberts, between Mr. Roberts' testimony and mine, if other buildings than

No. 6 had the slabs formed after the Virginia Engineering Company got well started on the work.

R. X Q. 519. According to Mr. Roberts, he said 8, 17, 7, 14, 2, 16, 15, and 14—

The COMMISSIONER. Were what?

By Mr. JULICHER:

R. X Q. 519. (Continued.) Were not bolted.

1558 Mr. KILPATRICK. No, were bolted.

Mr. JULICHER. All right. Were bolted.

By Mr. JULICHER:

R. X Q. 519. (Continued.) That would leave the other buildings as not having been bolted?

A. Mr. Roberts would not necessarily recall offhand on the stand.

R. X Q. 520. Mr. Roberts was there and he was demonstrating his remarkable memory, if I remember correctly. Do you recall any delay or any record of any delay by reason of your not having received certain bricks on the job?

A. I have testified with regard to a short delay in connection with receiving certain molded brick.

R. X Q. 521. That was a manufactured brick; is that what they were called?

A. All of them are manufactured brick.

R. X Q. 522. Well, a particular kind of manufactured brick; would that be it?

A. It was a specially shaped brick.

R. X Q. 549. In your computation, which is Plaintiff's Exhibit No. 52, I think, regarding the rodmen, you have figured the rodmen as unskilled or semiskilled workers, and have paid them accordingly, is that correct?

A. I do not understand that question.

R. X Q. 550. Well, in your computation, they are not skilled mechanics that were entitled to \$1.10 an hour. You are attempting to recover the difference between sixty cents and \$1.10 an hour that you allege to have paid them?

1559 A. No, sir. The difference between sixty cents and \$1.10 an hour would not work out the same as our claim here.

R. X Q. 551. Well, you have here 825 tons of reinforcing bars at \$10.00 a ton, \$8,250.00?

A. That is our estimate.

R. X Q. 552. And what is that based on?

A. Our experience of the cost of placing reinforcing steel on other similar projects.

R. X Q. 553. Is there any difference if you place the reinforcing steel there instead of typing it up as you would a post or column?

A. Yes. Very naturally, there would be some difference in the fabrication between the column reinforcing and the slab reinforcing. On work of this kind, the proportion of column reinforcing to slab or wall reinforcing would be about the same in similar Veterans Hospital groups.

R. X Q. 554. Then it is more difficult to place column reinforcing than it is a slab reinforcing?

A. It is more expensive; yes.

R. X Q. 555. And you figure a difference per ton for placing this?

A. No. We averaged it throughout the job.

R. X Q. 556. Then this is an average of slab and post?

A. Yes. It is an average of footings, walls, columns, beams, and slabs.

R. X Q. 557. What is this figure, then, an estimate, or is it the actual expense incurred?

1560 Mr. KILPATRICK. Which figure?

Mr. JULICHER. The figure with reference to this, well, \$8,322.50.

A. That is an estimate, the amount included in our original estimate in preparing our bid to the Government.

By Mr. JULICHER:

R. X Q. 558. Have you any record of your actual cost?

A. Yes.

R. X Q. 559. What would that be?

A. \$17,149.65.

R. X Q. 560. Where did that come from, \$17,149.65? Is there a separate pay roll covering that item, or did you have it to estimate a certain part?

A. No; that is taken from our cost records.

R. X Q. 561. Your cost records?

A. Yes, sir; the distribution on our daily report.

R. X Q. 562. You were able to segregate this particular part?

A. Yes, sir. Every day, the daily report coming into the Montgomery office from the Roanoke job showed how much money had been spent that day for placing reinforcing steel, and all of that money segregated totalled that amount.

By Mr. KILPATRICK:

R. X Q. 563. The daily reports you mention are embodied in Plaintiff's Exhibit No. 11 and No. 11-a?

A. Yes.

1561 By Mr. JULICHER:

R. X Q. 564. That \$17,149.65 includes all your expense in connection with this reinforcing steel, is that correct?

A. All the labor in connection with it.

R. X Q. 565. All the labor?

A. Yes.

R. X Q. 566. And that would include any replacing you had to do or any other like item, wouldn't it?

A. Yes; unless in the case of replacing, there might have been an item in the report, replacing reinforcing. Even then, it would probably have been included in this item, though. The \$50.00 item included in this estimate for replacing, that also might be included in this.

Mr. JULICHER. Have you Plaintiff's Exhibit No. 49 here?

Mr. KILPATRICK. It is in this group here.

By Mr. JULICHER:

R. X Q. 567. Mr. Clarke, you offered some testimony with regard to this item in the data of excavation costs in June. You said something about receiving \$45,000.00 from the Government for work done at that time. That is your total cost. The total cost, \$24,254.76, and you said that you had received over \$45,000.00 for work done.

A. I think the figure was nearer \$43,000.00.

R. X Q. 568. \$43,000.00?

A. Yes.

1562 R. X Q. 569. Didn't you offer figures stating that you did 26,334 cubic yards at fifty cents, making \$13,167.00 and 71,588 cubic yards at forty-five cents which would be \$32,214.60?

A. I have a similar memorandum here, which I think is correct, 26,334 cubic yards at fifty cents, the general excavation was \$13,167.00, and then 71,588 yards at forty-five cents, which would be \$32,214.60, making a total of \$45,381.60; yes, sir. Now, that was the amount paid us by the Government as a part of our monthly progress payment, and based on a schedule which had been agreed to ahead of time, in which these prices were set up to include our costs, and the proportion of all the overhead and profit and other general items of the contract, and had no bearing on the actual cost of the work.

R. X Q. 570. And that is what was confusing. According to this schedule, \$24,254.76 was the actual cost?

A. Yes.

R. X Q. 571. As against \$45,381.60 you received for that work. Is that the way it figures?

A. That was the amount that had been allowed in paying us up to that time, the total amount paid us under the contract had to be divided up under various heads, for the purpose of arriving at these monthly payments, and the amount they paid us had no definite relation to the cost of execution.

By the COMMISSIONER:

R. X Q. 572. Yet you are interested in getting a reasonable total, not so much the technical distribution?

1563 A. Yes, sir.

By Mr. JULICHER:

R. X Q. 573. Well, you mentioned two pay-off rates, fifty cents and forty-five cents. Were they the pay-off rates?

A. Yes, sir. In the schedule of payments agreed upon between the Veterans' Administration and us, ahead of time, the general excavation for buildings was listed at fifty cents per cubic yard, and excavation for outside grading, and so forth, was listed at forty-five cents per cubic yard.

R. X Q. 574. Well, coming down the list to the last item there, the total cost was \$46,300.78. Now, how much do you figure you actually received on that item for the total cost of the excavation? Do you see what I mean? I am down here to February. That is the last month. The total cost to date \$46,300.78.

A. Yes, sir.

R. X Q. 575. Now, what did you receive, forty-five cents and fifty cents?

A. Yes; but regardless of what they paid us for every individual item, the total amount of all the payments they made to us had to total the contract price, and the unit prices of an individual item is not material, except as arriving at a basis for the monthly payments.

R. X Q. 576. Well, then, how do you justify the twenty-two cents unit cost for the balance of 78,088 yards?

1564 A. The amount that we had in the estimate of this work or the amount that we were paid by the Government does not have any bearing on this claim.

By Mr. KILPATRICK:

R. X Q. 577. Which claim?

A. On the claim for this item.

R. X Q. 578. Are you talking about the excavating?

Mr. JULICHER. Exhibit No. 49.

A. We are claiming that by this schedule we have demonstrated that by the first of April we had built up an organization there capable of moving more than 20,000 yards of earth per month, at a cost of about 21¼ cents per yard, and that we maintained that average during April and May, proving that we had the organization, the equipment, and the ability to do it, and that at the end of that time there was only some 78,000 yards left to be moved, and that had we not been delayed by Redmon, we could have maintained this average of 20,000 yards a month, and could have moved the other 78,000 during the good months of June, July, and August.

and September at a cost not to exceed twenty-two cents a cubic yard, but that since we were delayed and our production was reduced, and our costs went up and we had to go on through the winter, materially increasing our unit price, we should be paid the difference between what it cost us then and what it would have if we had been permitted to proceed and finish that grading during June, July, August, and September.

1565 By Mr. JULICHER:

R. X Q. 579. Wouldn't the character of the material excavated make any difference? You have a rather large site here to work on, didn't you?

A. Yes, sir.

R. X Q. 580. Wouldn't the weather conditions make a difference?

A. Yes, sir; decidedly.

The COMMISSIONER. That is one thing he talked about in June, July, August and September is good weather.

By the COMMISSIONER:

R. X Q. 581. Isn't that it?

A. Yes.

By Mr. JULICHER:

R. X Q. 582. In June you excavated over 16,000 cubic yards, and that cost you twenty-four cents?

A. Yes, sir.

R. X Q. 583. Almost twenty-five cents per cubic yard. In September, October, and November, you excavated 10,000 cubic yards or better in each one of those lots, and your costs went 31 to 35 and 33 cents a cubic yard?

A. In those months I think you are mistaken. I think the schedule shows the cost was 26, 26.99, and 27.43 per yard.

R. X Q. 584. September, October and November?

A. No; you are right, 31, 35, and 33.

R. X Q. 585. So you do have to taper off some time. You cannot always move 20,000 yards right to the end, every month? You have to taper off somewhere, and some time you are going to have to ease off and ease off your equipment, and I assume your unit costs would go up some?

A. Very slightly, if at all, if you are permitted to go ahead at the full rate to the completion of the work.

R. X Q. 586. Are you ever able to conduct your excavation exactly as planned, without any hindrance from weather or other conditions?

A. Yes.

R. X Q. 587. You mean you run into ideal conditions quite often?

A. Yes.

R. X Q. 588. You do not have any bad weather conditions?

A. We always take that into consideration.

R. X Q. 589. You do not ever run into unlooked-for subsoil conditions?

A. Occasionally.

By Mr. KILPATRICK:

R. X Q. 590. In other words, Mr. Clarke, you cannot prove by records or by arithmetic what it would have cost you to do this job under different circumstances, can you?

A. No, sir.

By Mr. JULICHER:

R. X Q. 591. There is more than one method of arriving at a fair unit price. For instance, an average might be taken over the entire period. I don't think that the best is a fair average.

A. We think we have demonstrated in April and May what we could have done on through to the completion of the job, and we have not taken the full advantage of that, because in April 1967 and May our average cost was $21\frac{1}{4}$ cents, and we have figured on the balance of it costing us, under normal conditions, 22 cents.

R. X Q. 592. Then you say the Government pay-off rate of forty-five cents should not be considered at all in this phase of your claim?

A. No, sir.

By the COMMISSIONER:

R. X Q. 593. No, sir—what? It should not be considered?

A. It should not be considered.

By Mr. JULICHER:

R. X Q. 594. And it is twenty-two cents as against forty-five?

A. Yes, sir.

By Mr. KILPATRICK:

R. X Q. 595. Does your contract, Mr. Clarke, state that you were to get paid as compensation for moving this earth, at the rate of forty-five or fifty cents a yard?

A. No, sir.

Mr. JULICHER. There was an agreement afterwards, he says.

By Mr. KILPATRICK:

R. X Q. 596. Was that agreement modifying the contract price and agreeing you should be paid on a unit basis?

A. No, sir.

R. X Q. 597. What was the agreement?

A. Simply a schedule agreed upon by the Government and us as a basis of making partial payments to us during the progress

of the work, the total amount of which was to total our contract price.

1568

By Mr. JULICHER:

R. X Q. 598. Referring to your Plaintiff's Exhibit No. 147, which shows the planned progress schedule and the actual progress schedule, did you compare the actual progress schedule with the Government's Exhibit I-I?

A. I did not.

R. X Q. 599. Is your line of actual progress based on monthly payments, or bimonthly payments, or semimonthly?

A. We were only made payments monthly, and my chart was based on monthly payments. The Government's superintendent did make a semimonthly report to the Department, but he only gave us copies of the report at the end of the month; or, in other words, monthly reports.

R. X Q. 600. Do you know that the chart prepared by Mr. Sauer that is marked "Exhibit I-I" was prepared from the same source of information that you prepared your chart from?

A. Apparently it was, and I have had occasion to check at least one figure with him and found our figures are identical. My chart, however, is drawn on a little different scale, horizontally; I have my months as he does, and vertically I have drawn 10 units scaling the same as a month, whereas he has ten units scaling considerably less than that. His curve would be flatter down. Otherwise, they would coincide exactly as to percentage at any given monthly time.

R. X Q. 601. This information would originally come from your Roanoke office. Any information that is included in 1569 this line showing the actual progress would originally come from your Roanoke office and from Mr. Roberts and his assistants on that job, is that so?

A. No, sir. Captain Feltham, the Government representative, at the end of each month, sent us a copy of the progress report which he submitted to Washington.

R. X Q. 602. And where did he get that information?

A. He, together with our forces there, worked out the estimated each month for the monthly payments. He worked up his progress reports accordingly and gave us a copy of it. These vouchers were based on these progress reports.

R. X Q. 603. Those figures would be certified to by your superintendent, though, wouldn't they?

A. No, sir.

R. X Q. 604. They would not be? He would not certify those figures.

A. He would certify the voucher; yes.

R. X Q. 605. For the pay roll?

A. No.

R. X Q. 606. For the pay-off, for the money you received?

A. When the Government representative completed the voucher, ready to send to Washington, our superintendent would sign it for us, indicating the money was due and had not been paid, or words to that effect.

By Mr. KILPATRICK:

R. X Q. 607. Captain Feltham's own observation as to what was going on on the job should enter in into his report to the Veterans' Administration on his report, as to the completion, did it not?

1570 A. Yes. It was Captain Feltham's report to the Veterans' Administration, not our report.

By the COMMISSIONER:

R. X Q. 608. It is based on the daily reports, and at the end of the month you work out something that is the basis for payment, and that is the way you get together?

A. Yes, sir.

Mr. JULICHER. That is all.

Redirect examination by Mr. KILPATRICK:

R. D. Q. 609. Mr. Clarke, in estimating for the submission of a bid on the Roanoke job, did you take into consideration whether or not your carpentry work would be union labor or open shop?

A. Yes.

R. D. Q. 610. What did you plan in making your bid?

A. Open shop.

R. D. Q. 611. What about the rodmen?

A. We expected to use semiskilled laborers for that work, as had been our custom for many years.

R. D. Q. 612. Did you expect to use union men on that work?

A. No, sir.

R. D. Q. 613. Did you ever use union men on the reinforcing steelwork at Roanoke, and did you have a union contract on the reinforcing steel at Roanoke?

A. No, sir.

1571 Re-cross-examination by Mr. JULICHER:

R. X Q. 614. Mr. Clarke, when the Blair Company entered into this contract, they did expect to pay all skilled mechanics \$1.10 an hour?

A. Yes.

R. X Q. 615. You did figure on that?

A. Yes.

Mr. JULICHER. That is all.

Supreme Court of the United States

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In the Supreme Court of the United States

Stipulation with respect to printing record

Filed Nov. 10, 1943

Subject to this Court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that, for the purpose of the hearing of this case, the printed record may consist of the following:

1. The petition, general traverse and answer, the argument and submission of the case, special findings of fact, conclusion of law and opinion of the court below, the dissenting opinion of Madden, J., the judgment of the court, the proceedings after judgment, the order of the court settling the record, and the clerk's certificate, all of which has already been printed for the purposes of the petition for writ of certiorari in this case; and

2. The designated portions of the transcript of the testimony certified by the Court of Claims and filed with this Court.

1574 It is further stipulated and agreed that either party may print as an appendix to his brief, or refer to in his brief or oral argument, any part of the unprinted portion of the record, consisting of 204 exhibits, which has been certified by the Court of Claims and is filed with this Court.

Executed this 9 day of November 1943 in Washington, D. C.

CHARLES FAHY,
Charles Fahy,
Solicitor General,
Counsel for Petitioner.

H. CECIL KILPATRICK,
H. Cecil Kilpatrick,
Counsel for Respondent.